Franklin County Legal Journal

Volume 28, No. 20, pp. 77-91

In the Interest of J.A.B.

CIN THE INTEREST OF J.A.B., A MINOR, BORN 11/17/2002
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Orphans' Court Division, Adoption Docket No. 14-2009

Infants; Dependent, Neglected, and Delinquent Children; Evidence; Deprivation, Neglect or Abuse; Involuntary Termination of Parental Rights. Infants; Dependent, Neglected and Delinquent Children; Subjects and Grounds; Conflict with Parental Rights; Termination of Parental Rights.

1. Under 23 Pa. C.S.A. §2511, the grounds for termination under the statute must be proven by clear and convincing evidence. If such grounds under section (a) are found to exist, the Court must then consider whether termination would best serve the needs and welfare of the child, under section (b).

2. The analysis of whether the evidence presented warrants termination is described as a two-part test, initially focusing on the conduct of the parent and requiring clear and convincing proof their conduct satisfies the statutory grounds.

3. Only after it is determined that the parent's conduct does indeed warrant termination does the court engage in the second part of the analysis, considering what will best serve the needs and welfare of the child under the best interest standard.

4. One major aspect of the best interest analysis is the nature and status of the emotional bond between parent and child. Close attention must be paid to the effect on the child of permanently severing any such bond, and the trial court must consider intangibles such as love, comfort, security and stability.

5. The analysis of a parent's conduct under subsection (8) merely requires that the conditions leading to placement continue to exist, whereas under subsection (5) the Court must consider a parent's willingness or ability to remedy such conditions.

6. Due to both parents' incarceration, and the long-term drug abuse in which each has engaged, the conditions which led to J.A.B.'s placement continued to exist at time of hearing and showed no sign of resolution within any reasonable time. When we addressed this issue for the first time, in May of 2009, the child had already been in placement for fifteen of the preceding twenty-two months.

7. Father's long period of incarceration makes reunification with him a far distant possibility. Further, even if services were obtained, and Mother's unknown housing and lack of employment resolved, drug counseling and meetings faithfully followed, the process of reunification with Mother could take years. Clearly, such a span of time is not reasonable for a child such as J.A.B., who has such a pressing and urgent need for permanency.

8. It is vital to the child's physical, emotional and developmental welfare that she be given the chance to have her need for love, security, protection and care met without fear of being wrenched away from [her] committed and capable caregivers. Pennsylvania courts have rejected the idea that a parent's claims of progress and hopes for the future can take precedence over a child's need for permanence and stability. J.A.B.'s best interest requires she not grow up in an indefinite state of limbo, without parents capable of caring for her.

9. A proper 2511(b) analysis involves a consideration by the Court of the nature and status of the parent-child bond, with utmost attention to the effect on the child of permanently severing that bond. The importance of the continuity of relationships to the child must also be considered, as severing close parental ties may be painful.

10. In the instant case the Court was presented with a dichotomy, wherein obvious emotional ties exist between parents and child, but with parents who are unable to satisfy the irreducible minimum requirements of parenthood.

11. Termination of parental rights will allow the child to let go of that loyalty, as she will be assured that her foster parents, who she calls mom and dad, will indeed become permanent figures in her life. Put bluntly, the bond with her parents does not impel the child to communicate with them, inquire about them, direct her therapy sessions toward them, or speak positively about them. Rather, it causes her anxiety and impedes her healthy development. J.A.B. must now be allowed to extricate herself and establish a true parent child relationship through adoption.

12. On remand, the language of the appellate court did not require this Court to take additional evidence to perform the 2511(b) best interest analysis.

13. Even the Superior Court's erroneous perception that this Court totally omitted to conduct any analysis under 2511(b), our appellate court still stated the case was being remanded, as have others, for the purpose of conducting such inquiry including the taking of additional evidence if the trial court deems it necessary.

14. Our appellate court did not use language analogous to those cases wherein termination decrees were reversed and the matter remanded to allow the parties to provide additional evidence.

15. If this Court's 2511(a)(8) analysis were affirmed, it would commit error in considering such additional, post-petition conduct because of the evidentiary restriction in the statute.

Appearances:

M. Teri Hall Stiltner, Esquire, *Counsel for D.N.*

Kevin M. Taccino, Esquire, *Counsel for J.B.*

Mahesh K. Rao, Esquire, *Guardian Ad Litem*

Brian C. Bornman, Esquire, *Counsel for the Agency*

D.N., *Natural Mother*

J.B., *Natural Father*

OPINION *sur* Pa. R.A.P. 1925(a)

Van Horn, J., April 13, 2010

Statement of the Case

A petition seeking termination of the parental rights of natural mother, D.N. ["Mother"], and natural father, J.B. ["Father"], to the minor J.A.B., born November 17, 2002, was filed by the Franklin County Children and Youth Service [hereinafter "the Agency" or "C.Y.S."] March 2, 2009. On May 19, 2009, the Court held hearing on the Petition, as well as upon a Petition for Permanency Review requesting a goal change to adoption. The same date, after performing the two-step inquiry required under the Adoption Act, the Court entered a Decree and Order terminating parental rights. The Court additionally entered a Permanency Review Order, changing the goal to adoption. Both parents timely appealed. After considering the errors alleged in the Statement of Matters Complained of on Appeal filed by each parent, this Court issued an Opinion pursuant to Pa. R.A.P. 1925(a) on July 8, 2009.

The appeals were consolidated by the Superior Court, and the matters complained of by each parent briefed. By Opinion and Order dated February 19, 2010, the Superior Court affirmed in part, reversed in part, and remanded. The Permanency Review Order and the goal change to adoption were affirmed. See In re: J.A.B., No. 1065 MDA 2009, slip op. at 9-10 (Pa. Super. Ct., Feb. 19, 2010). In the termination proceedings, the Superior Court found this Court had engaged in a proper 23 Pa. C.S.A. §2511(a) analysis, setting forth sufficient factual findings to support the conclusion that grounds were established under subsections (5) and (8) meriting termination. Id. at 11. However, upon review of the second prong of the analysis under section 2511, the Superior Court found this Court had failed to perform the best interest analysis mandated by section (b). As such, the Superior Court reversed the Decree terminating the rights of D.N. and J.B. As in similar cases, the appellate court "remanded the case to the trial court for such an analysis, including the taking of additional evidence to aid in that analysis if the trial court deems it necessary." Id. at 12-13.

Upon receiving the Superior Court's determination, this Court acted swiftly to clarify the findings made and the conclusions reached after the May 19, 2009 hearings, issuing an Opinion and Order March 1, 2010, fully setting forth the best interest analysis it previously conducted under 23 Pa. C.S.A. §2511(b) on May 19, 2009. On March 30 and 31, 2010, D.N. and J.B., respectively, filed Notice of Appeal and Concise Statements. Having reviewed the allegations of error submitted by the parties and the entire record in the matter, the Court now issues this Opinion and Order as required under Pa. R.A.P. 1925(a).

Issues Presented

Each biological parent now takes issue not only with this Court's analysis under 2511(b), the impetus for the remand by the Superior Court, but also with the first prong of the inquiry under the statute. Each alleges an abuse of discretion in this Court's analysis under each subsection of 2511(a), claiming there was insufficient evidence of record to determine their conduct merited termination under 2511(a)(5) and (8). Mother additionally claims that the Superior Court failed to address this same assertion put forth as error in her June 2009 appeal. Additionally, each biological parent raises the analysis under section (b). Father maintains there was insufficient evidence to support the conclusion that termination of his parental rights is in J.A.B.'s best interests, specifically alleging the Court failed to consider the "strong bond" between himself and the child. Finally, both parents assert the Court abused its discretion in failing to hold additional hearing on the Petition for Involuntary Termination after the matter was remanded by the Superior Court. Each parent maintains the Court required additional evidence to perform the 2511(b) analysis, assuming such analysis was not performed at the initial, May 2009 hearing, and arguing in the alternative a new hearing was required.

As the issues raised by both D.N. and J.B. lack merit, and as the two-part analysis under 23 Pa. C.S.A. §2511 was fully performed after the hearing in May of 2009, this Court requests that the Superior Court dismiss the appeals. Each parent's conduct merits termination of their rights, and though the termination has severe consequences for all involved, this Court has no doubt it is in the child's best interest after considering her developmental, physical and emotional needs and welfare. The hopes and wishes of her parents cannot serve to indefinitely deny J.A.B. the permanent, safe future she desperately needs and deserves.

Discussion

A. Standard of Review

The standard of review in matters involving the involuntary termination of parental rights is limited, with the appellate court determining only whether the trial court's order is supported by competent evidence. See In re Z.S.W., 946 A.2d 726, 728 (Pa. Super. Ct. 2008). The Superior Court has stated:

> Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand. 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. We must employ a broad, comprehensive review of the record in order to determine whether the trial court's decision is supported by competent evidence.

In re S.H., 879 A.2d 802, 805 (Pa.Super.2005). Termination of the parental rights of a biological parent is governed by 23 Pa. C.S.A. §2511. The grounds under the statute must be proven by clear and convincing evidence. If such grounds under the first section are found to exist, the Court must then consider whether termination would best serve the needs and welfare of the child, under the second section (b). Our appellate court need only find competent evidence of record to support the trial court's decision under one subsection of 2511(a) in order to affirm the termination. See id. at 806.

Clear and convincing evidence is defined as testimony "so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitance, of the truth of the precise facts in issue." In re Julissa O., 746 A.2d 1137, 1139 (Pa. Super. Ct. 2000). The Court must examine the circumstances of the individual case before it, considering the explanations offered by the parent to determine if, given the totality of the circumstances, the evidence clearly warrants termination. See id. Additionally, the trial court, in its role as fact finder, is the sole judge of the credibility of witnesses, charged with resolving all conflicts in the testimony presented. See In re S.H., 879 A.2d at 805.

Instantly, the Court found the Agency had proven grounds for termination of the rights of both Mother and Father under 2511(a)(5) and (a)(8). The subsections provide:

> (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:

> ...
> (5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, 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 child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.
> ...
> (8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

23 Pa. C.S.A. §2511 (2010).

After engaging in the first part of the test, under section (a) of the statute, the Court is then required to undergo analysis under the sub-section b. The second part of the statute provides:

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

23 Pa. C.S.A. §2511(b). The Superior Court has described the process as a two-part test, initially focusing on the conduct of the parent and requiring clear and convincing proof their conduct satisfies the statutory grounds. See In re R.N.J., 985 A.2d 273, 277 (Pa. Super. Ct. 2009). Only after it is determined that the parent's conduct does indeed warrant termination does the court engage in the second part of the analysis, considering what will best serve the needs and welfare of the child under the best interest standard. See id. One major aspect of this analysis is the "nature and status" of the emotional bond between parent and child. In re T.D., 949 A.2d 910, 916 (Pa. Super. Ct. 2008). The Superior Court has stated that "close attention" must be paid to the effect on the child of permanently severing any such bond. Id. The trial court must consider "intangibles such as love, comfort, security, and stability." Id. at 920.

B. Sufficient Evidence Exists on the Record to Clearly and Convincingly Prove Grounds for Involuntary Termination Under 2511(a)(5) and (8)

Both parents assert the record lacks sufficient evidence to find their conduct warrants termination under 2511(a)(5) and (8). This issue revisits the determination by this Court, affirmed by the Superior Court, that clear and convincing evidence existed under 23 Pa. C.S.A. §2511(a)(5) and (8) to terminate parental rights.[1] The Superior Court reviews findings by a trial court in such matters for an abuse of discretion, and will affirm "if the trial courts findings are supported by competent evidence, even if the record could also support the opposite conclusion." In re Adoption of A.P., 920 A.2d 1269, 1273 (Pa. Super. Ct. 2007).

Under subsection (5), each of the five elements defined by statute must be proven clearly and convincingly. See In re Adoption of J.J., 515 A.2d 883, 885-86 (Pa. 1986); In re N.C., 763 A.2d 913, 917-18 (Pa. Super. Ct. 2000) (setting forth the five elements). In the instant case, each element defined by statute was amply supported by the record at the hearing. Under subsection (8), J.A.B. has been in placement now almost twenty-seven (27) months and fifteen (15) months at the time of the hearing, far in excess of the year required under the statute. Additionally, the conditions leading to the child's placement continued to exist at hearing, and termination will clearly serve J.A.B.'s needs and welfare. See 23 Pa. C.S.A. §2511(a)(8); In re S.H., 879 A.2d 802, 807 (Pa. Super. Ct. 2005) (noting the analysis under subsection (8) merely requires that the conditions leading to placement continue to exist, whereas under subsection (5) the Court must consider a parent's willingness or ability to remedy such conditions); In re I.J., 972 A.2d at 11.

The assertions by each parent that insufficient evidence was put forth of record to support termination are unfounded.

Both parents and the Agency fully presented their evidence at the May 19, 2009, hearing. There was wide ranging testimony and exhibits addressing the circumstances of J.A.B.'s placement, her behavior thereafter, progress in the foster home, therapy sessions, and disclosures to her caseworkers and caretakers. There was discussion by both parents about J.A.B. and their relationship with her prior to placement, explanations by each as to the pervasive presence of drugs in the home, and descriptions of their respective efforts while incarcerated to utilize the services available to them. The bonds between natural parents and child were addressed, by both the parents as well as those who have served as caretakers since her mother and father's choices left her without any other caretakers.

Additionally, the Court heard a great deal of testimony on the confusion J.A.B. faces while she waits for the courts of the Commonwealth to decide her fate. J.A.B. is an intelligent child, and she understands that while she could continue in her foster home, she could also be returned to her parents. She is torn between the loyalty she believes she should feel to her mother and father, and the reality of the fear and neglect she experienced in their care.

Due to both parents' incarceration, and the long term drug abuse in which each has engaged, the conditions which led to J.A.B.'s placement continued to exist at time of hearing and showed no sign of resolution within any reasonable time. When we addressed this issue for the first time, in May of 2009, the child had already been in placement for fifteen of the preceding twenty-two months. Father would be incarcerated for years to come, making it impossible for him to obtain the services needed to remedy the conditions leading to placement within any reasonable time. Even upon his release, Father will require extensive drug counseling, as well as such normal considerations of stable housing and employment, prior to assumption of full parental duties regarding his daughter.

Mother did not have a concrete release date, though she expected release far sooner than did Father. Yet D.N. would thereafter have to maintain sobriety in a half-way house, then find stable housing of her own, and find employment. Further, in order for the Court to ensure that J.A.B. would be safe from harm in her mother's care, D.N. would have to demonstrate sobriety and stability for a long period of time after her release from supervision. Cf. In re S.H., 879 A.2d at 807; In re I.J., 972 A.2d at 11. Mother was addicted to heroin even prior to the child's birth as evidenced by her status of being a methadone patient. The Court will not return a small child to a parent with a clear habit of using strong narcotics absent concrete evidence the parent is committed to sobriety. Even if services were obtained, her unknown housing and lack of employment resolved, and drug counseling and meetings faithfully followed, the process of reunification with Mother could also take years. Clearly, such a span of time is not reasonable for a child such as J.A.B., who has such a pressing and urgent need for permanency.

Sadly, in terms of reunification, years of waiting seems the best case scenario for J.A.B., as the Court was unconvinced either parent will alter their habitual behavior. The drug abuse by the biological parents in this case, carried on for years prior to J.A.B.'s birth, and later in her very presence, ultimately rendered both J.B. and D.N. incapable of caring for her. Rather than accept responsibility for their neglect, both maintain the family life was happy, healthy, and would again return to the idyllic home of the past if J.A.B. were placed in their care. Neither parent has demonstrated any sincere, concrete realization that their actions caused the child to be without essential care, or that the circumstances in their home were, as the guardian ad litem aptly stated, "in need of massive rectification." See Transcript of Proceedings in Involuntary Termination, Tuesday, May 19, 2009 [hereinafter T.P.I.T., 5/19/09], at 112-13. Cf. In re Adoption of Steven S., 612 A.2d 465, 470 (Pa. Super. Ct. 1992) (stating biological parents failure to remedy the problems leading to placement over a span of years, coupled with a failure to even "acknowledge these problems in the face of overwhelming evidence" was sufficient evidence to show the problems would not be remedied within a reasonable time).

Sadly, the evidence clearly demonstrates J.A.B. did lack essential parental care and nurturance in Mother and Father's care. Neither parent apparently realized the child required glasses, or even, to the Court's consternation, that her teeth were literally rotting out of her mouth. The child has recounted there were times she did not have food, did not have care, and did not have attention from either parent. She has recounted there were times when she was afraid in her own home because of the actions of her parents and their friends, such as the user discovered by police with the syringe in his arm. J.B. and D.N. saw fit to teach their daughter to "watch out" for police while they engaged in criminal activity.

J.B. requested more drugs for D.N. while she was in prison, and was on the run himself, presumably continuing such abusive behavior, for months while his child was cared for by others. D.N. was not forthcoming or honest about her own past drug abuse, the taking of such responsibility being a vital, and here lacking, component of recovery. By their conduct, J.B. and D.N. demonstrated that their concern for themselves and their drug of choice, heroin, have consistently come before their parental duty to J.A.B. Based on the testimony of each parent, the Court determined the assertions by each that they would alter their behavior were incredible. Indeed, if J.A.B. were returned to their care, the Court would have serious concerns for her health, both physically and emotionally, and her safety.

Indeed, her best interest requires she not grow up in an "indefinite state of limbo, without parents capable of caring for

[her]." In re N.C., 763 A.2d at 918. As in N.C., the instant child lives in fear of returning to a home where drug abuse and neglect were commonplace. Indeed, it is vital to the child's physical, emotional and developmental welfare that she be given the chance to have her need for love, security, protection and care met without fear of being "wrenched away from [her] committed and capable caregivers." Id. at 919. Pennsylvania courts have rejected the idea that a parent's claims of progress and hopes for the future can take precedence over a child's need for permanence and stability. See I.J., 972 A.2d at 12.

Thus, it is this Court's position that there was sufficient evidence to support the grounds for termination set forth under 2511(a)(5) and (8), a determination we believe already reached by our appellate court. In the event the Superior Court wishes to further revisit the issue, we refer to our Opinion and Order pursuant to Pa. R.A.P. 1925(a), dated July 8, 2009. See Judicial Opinion *sur* 1925(a) and Order of Court, July 8, 2009, at 8-10. Additionally, the Decree issued May 19, 2009, setting forth the facts in support of termination under paragraph six (6), fully explicates the facts which led this Court to the conclusion the legal grounds for termination were clearly and convincingly demonstrated under 2511(a)(5) and (a)(8).

C. Termination of Father's Parental Rights Will Not Destroy a Bond that is Necessary or Beneficial to J.A.B., and Is In Her Best Interest

On May 19, 2009, after conducting the first prong of inquiry under 2511(a), and finding grounds clearly and convincingly demonstrated under (a)(5) and (a)(8), the Court proceeded to the second prong of the analysis, considering J.A.B.'s best interests. As we explicated in our March 1, 2010, Opinion and Order, attached hereto and incorporated herein by reference, there is no doubt that termination will serve J.A.B.'s best interests. Indeed, an abundance of evidence was produced at hearing to demonstrate the second prong of the test met, even considering the bonds which existed between each parent and the child.

Father complains the Court failed to consider his bond with J.A.B. in conducting the 2511(b) analysis. This assertion is in error. To the contrary, because the testimony of the caseworkers and each parent demonstrated a bond did exist, the Court fully considered the nature and extent of this bond as required by our appellate courts. See, e.g., In re I.J., 972 A.2d at 12. See also Judicial Opinion and Order of Court, March 1, 2010, at 8, [2] 9-10. Ample evidence was presented on May 19, 2009, to find that although a bond does exist between J.A.B. and her father, this bond is not beneficial to the child, such that termination will serve her best interests. See Judicial Decree and Order of Court, May 19, 2009, at 6(d), (n), (q); Judicial Opinion *sur* Pa. R.A.P. 1925(a) and Order of Court, July 8, 2009, at 7-8.[3] As Father points out, a proper 2511(b) analysis involves a consideration by the Court of the "nature and status of the parent-child bond, with utmost attention to the effect on the child of permanently severing that bond." In re T.D., 949 A.2d 910, 920 (Pa. Super. Ct. 2008). The importance of the continuity of relationships to the child must also be considered, as severing close parental ties may be painful. See In re I.J., 972 A.2d at 12.

As our appellate courts have repeatedly stated, "[a] child needs love, protection, guidance, and support." In re Burns, 379 A.2d 535, 540 (Pa. 1977). J.A.B. looked to both parents to fulfill those needs, and was left wanting. As in T.D., the instant case presented a dichotomy, wherein "obvious emotional ties exist" between parents and child, but with parents who are "unable to satisfy the irreducible minimum requirements of parenthood." In re T.D., 949 A.2d at 920. Although a bond does exist, the facts are more analogous to those cited in T.D. which supported termination than those which found an abuse of discretion.

J.A.B. has not reached the age where consent is required for adoption, being now only seven (7) years of age. Further, the family with which she currently resides is an identified pre-adoptive home, and she has currently been safe and secure there more than two years of her life. As in T.D., if the termination of parental rights is not affirmed, this Court fears J.A.B. will be doomed to perpetual foster care until she reaches majority, as the Court was convinced her parents will continue to be unable or unwilling to provide a safe environment for her. Id. at 923. As in T.D., the child must be able to move on, avoiding "vague future promises" and finding a permanent home. Id. The Court notes that as in T.D., Father prior to the Christmas season made promises to J.A.B. that she would return to her parents prior to the holiday, and the child refused to make her foster parents a Christmas list.

It is not in the child's best interest to allow this to be only the first of a series of disappointments. The testimony at the May 2009 hearing made clear that a large proportion of the child's discomfort results from not knowing her future, being torn between loyalty to her parents and the fear and discomfort associated with the reality of their care. Termination of parental rights will allow the child to let go of that loyalty, as she will be assured that her foster parents, who she calls mom and dad, will indeed become permanent figures in her life. Put bluntly, the bond with her parents does not impel the child to communicate with them, inquire about them, direct her therapy sessions toward them, or speak positively about them. Rather, it causes her anxiety and impedes her healthy development. J.A.B. must now be allowed to "extricate"

herself and establish a "true parent child relationship through adoption." In re Adoption of Steven S., 612 A.2d 465, 471 (Pa. Super. Ct. 1992).

D. Neither a *De Novo* Nor a Supplemental Hearing Was Required

Finally, both parents argue the Court erred in failing to re-open the record and hold either a *de novo* or at least a supplemental hearing, asserting additional evidence was required to adequately perform the 2511(b) best interests analysis. The instant case, involving a child so obviously gifted, sensitive, and desperately in need of a stable home, is not difficult for the Court to recall. Indeed, as did the child's caseworkers, the Court concluded J.A.B. is a special child, with enormous potential begging to be cultivated. Though this Court has conducted hundreds of hearings involving all areas of law, this child and the testimony of her parents and her caretakers remain clearly in our mind.

The language of the Superior Court Opinion granted this Court discretion in determining if additional evidence was required to undertake analysis. Our appellate court was seemingly most concerned by its belief this Court "failed to engage in the section 2511(b) analysis at the time of its deliberation and decision in this matter." See *In re: J.A.B.*, No. 1065 MDA 2009, slip op. at 12 (Pa. Super. Ct., Feb. 19, 2010). Yet, as this Court has — perhaps repeatedly — explained, it did conduct the two-prong analysis under the statute at the time of its determination May 19, 2009, considering ample evidence. Even the Superior Court's erroneous perception that this Court totally omitted to conduct any analysis under 2511(b), our appellate court still stated the case was being remanded, as have others, for the purpose of conducting such inquiry "including the taking of additional evidence ... if the trial court deems it necessary." Id.

Our appellate court did not use language analogous to T.F. or to C.W.S.M., cases wherein termination decrees were reversed and the matter remanded "to allow the parties to provide additional evidence." See In re T.F., 847 A.2d 738, 744 (Pa. Super. Ct. 2004) (citing In re Termination of C.W.S.M., 839 A.2d 410 (Pa. Super. Ct. 2003) (remand "to allow the parties to present testimony regarding the emotional bonds between Father and children")). Cf. In re I.J., 972 A.2d 5, 13 (Pa. Super. Ct. 2009) (stating the case was remanded to the trial court "for a comprehensive 'best interests' analysis" as the record "facially support[ed]" the trial court's conclusion, and leaving the taking of additional evidence to its discretion).[4]

The Court conducted hearings on both the Petition for Permanency Review, and on the Petition for Involuntary Termination of Parental Rights the same date, hearing all pertinent and relevant evidence. In conducting a permanency review, the Court is guided by statute, and focuses on the best interest of the child. See In re S.B., 943 A.2d 973, 977-78 (Pa. Super. Ct. 2008); 42 Pa. C.S.A. §6351 (2010). Indeed, the Superior Court has stated " [s]afety, permanency, and well-being of the child must take precedence over all other considerations." In re S.B., 943 A.2d at 978 (citation omitted). The Court found, after considering the statutory factors, J.A.B.'s best interests would be served by a goal change from return home to adoption, a finding the Superior Court subsequently affirmed. Thereafter, the Court proceeded to the two-part test for involuntary termination, first analyzing the conduct of the parents under subsection (a), and then considering the needs and welfare of the child, under subsection (b). Thus, the Court three times on May 19, 2009, considered the physical and emotional needs and welfare of the child and her best interest: once as to the request for goal change in the permanency review, once under 2511(a)(8) (although in view of the conduct of the parents), and yet again in performing the 2511(b) analysis.

Further, the Court conducted its consideration of J.A.B.'s best interests directly following the hearing, while the testimony of the child's caseworkers, the guardian *ad litem*, and both parents were fresh in our recollection. [5] The Court stated its findings under each section of the statute on the record at the May 19, 2009 hearing. See T.P.I.T., 5/19/09, at 113-15. Later the same date, in paragraph six (6) subsections (a) through (o) of our Decree, the Court set forth its findings of fact relating to 2511(a)(5) and (a)(8). See Judicial Decree, 5/19/09, at ¶ 6 (a)-(o). In subsections (p), (q), and (r), the Court reconsidered and restated its best interests analysis, this time under the second section of 2511. Id. Upon receiving the appeal of her biological parents, the Court restated its analysis regarding the permanency petition and the petition for involuntary termination in our July 8, 2009, Opinion. Judicial Opinion *sur* 1925(a) and Order of Court, 7/8/09, at 5-8, 8-10. Rather than pen a repeated discussion of the child's best interests, extensively explained earlier in the same opinion as the Court discussed the goal change to adoption, the Court instead referred to its prior analysis. See id. at 11.

Unfortunately, the language of our 1925(a) Opinion dated July 8, 2009, included in an attempt to be thorough, was misunderstood by the Superior Court. The Opinion notes that "neither Mother nor Father has challenged that the Court failed to give consideration to the 'best interests' analysis required by 23 Pa. C.S.A. 2511(b), but to be thorough, we refer to our above discussion of the facts supporting the goal change to adoption." Id. at 11. The Court did not mean to suggest the 2511(b) analysis was not performed completely on May 19, 2009. Rather, the Court was noting neither parent raised any issue as to the sufficiency of the analysis under 2511(b) in their Statement of Matters Complained of on Appeal, or

alleged such analysis lacked evidentiary support. Indeed, the Court did perform such analysis on that date, and found the child's best interest required termination. The Court weighed the testimony of the child's therapists regarding her love for her parents, and her statements she misses them, as well as the affirmations of each parent of their love and commitment to the child. The Court definitively concluded J.A.B.'s best interests required the severance of any parental bonds in the interests of achieving permanency for the child in a safe and healthy environment.

Not only was the best interest analysis completed initially, but a later hearing to take additional evidence on the matter would not have been helpful to the determination. As such, the issuance of the March 1, 2010 hearing, as quickly as possible upon receiving direction from our appellate court, was not an abuse of discretion. Rather, the Court acted quickly to elucidate the misunderstanding and speed the process of giving the child a permanent determination on her future.

Clearly, Pennsylvania case law demonstrates that without evidence as to the effect of termination upon the child, there is neither competent nor sufficient evidence to allow a proper determination under 2511(b). See, e.g., In re E.M., 620 A.2d 481, 485 (Pa. 1993). Yet in the instant case, there was ample evidence as to J.A.B.'s best interest, as well as upon the bonds between the child and her parents. See, e.g., T.P.I.T., 5/18/09, at 7-9, 15-19, 21, 23, 35-37, 38-39, 46, 57-58, 61-62, 81-82, 99-100, 103-04. If this were not the case, then the Superior Court would not have affirmed our decision to change J.A.B.'s permanency goal to adoption. As this Court wrote in our July 8, 2009, Opinion, the evidence put forth in support of the goal change is the same evidence the Court utilized to conduct the best interests analysis under 2511(b).

To clarify the poorly drafted sentence in the June of 2009 Opinion, the Court penned an eleven (11) page Opinion, incorporated herein by reference, confined exclusively to explicating the 2511(b) inquiry undertaken May 19, 2009. See Judicial Opinion and Order of Court, March 1, 2010. New evidence was unnecessary, as ample testimony was provided at the initial hearing addressing the child's best interests. Indeed, due to the language contained in 23 Pa. C.S.A. 2511(b), the Court would have been prohibited from consideration of efforts by a parent subsequent to the filing of a petition for involuntary termination under 2511(a)(8). See 23 Pa. C.S.A. 2511(b); In re T.F., 847 A.2d 738, 744 (Pa. Super. Ct. 2004). Thus, if our 2511(a)(8) analysis were affirmed, the Court would commit error in considering such additional, post-petition conduct because of the evidentiary restriction in the statute. See In re D.W., 856 A.2d 1231, 1234 (Pa. Super. Ct. 2004). In any case, even exclusively under subsection (a)(5), having taken ample evidence on the child's best interests in May of 2009, and having conducted the appropriate two-step inquiry under the statute at that time, the Court did not abuse its discretion in declining to reopen the record and take additional evidence.

Conclusion

On May 19, 2009, after taking ample testimony and viewing varied exhibits, the Court determined the conduct of D.N. and J.B. merited termination of their parental rights under 23 Pa. C.S.A. §2511(a)(5) and (a)(8). On May 19, 2009, the Court proceeded to the second prong of the Adoption Act analysis, determining J.A.B.'s best interests under §2511(b) would be served by such terminations. After receiving notice that our appellate court had misunderstood our discussion in the Opinion *sur* 1925(a) issued July 8, 2009, the Court clarified the analysis conducted May 19, 2009, in an Opinion and Order issued March 1, 2010. As the Opinions and Orders of record illustrate, grounds were proven by clear and convincing evidence that termination was merited by the conduct of each parent. Further, our discussions disclose that the severance of any bonds with J.B. and D.N. is in the child's best interest. As such, this Court prays the Superior Court will dismiss the appeals of Father and Mother, and finally give J.A.B. the chance for permanency, peace of mind, safety, security, love and support she deserves.

April 13, 2010, pursuant to Pa.R.A.P. 1931(c), it is hereby ordered that the Clerk of Courts of Franklin County shall promptly transmit to the Superior Court of Pennsylvania the record in this matter along with the attached Opinion *sur* Pa.R.A.P. 1925(a).

---

[1] Although the Superior Court did not explicitly approve our analysis under (a)(5) and (8), the appellate court reached the second prong of the test, an inquiry conducted only where a court finds a parent's conduct warrants termination under at least one subsection of 2511(a). See In re I.J., 972 A.2d 5, 10 (Pa. Super. Ct. 2009). Additionally, the Superior Court wrote this Court "meticulously" specified our findings of fact and conclusions of law regarding 2511(a), taking issue only with the second prong of our analysis which it erroneously concluded we did not perform at all. See In re: J.A.B., No. 1065 MDA 2009, slip op. at 11-12 (Pa. Super. Ct., Feb. 19, 2010).

[2] Beginning "[t]his is not to say the Court found the decision to terminate the rights of Mother and Father easy. Such decisions seldom are, especially in a case such as this, where a bond does exist between parents and child."

[3] Ending with the conclusion that considerations related to J.A.B.'s long term stability "must necessarily outweigh any bond that currently exists [with Father or Mother], particularly when there is a ready, willing, and able adoptive resource to form a new parental bond with the child."

[4] The Court notes that in I.J., the Superior Court cited T.F. as example of a matter involving a "failure to receive sufficient relevant evidence on which to make a 'best interests' determination" and distinguished the matter therefrom. In re I.J., 972 A.2d at 13.

[5] Indeed, following the close of evidence.