NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: K.S.J., MINOR CHILD	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
	:	
APPEAL OF: G.S., FATHER	:	No. 1530 EDA 2013

Appeal from the Decree May 10, 2013
In the Court of Common Pleas of Wayne County
Civil Division at No(s): 4-AD-2012

IN RE: S.R.J., MINOR CHILD	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
	:	
APPEAL OF: G.S., FATHER	:	No. 1531 EDA 2013

Appeal from the Decree May 10, 2013
In the Court of Common Pleas of Wayne County
Civil Division at No(s): 5-AD-2012

IN RE: D.I.J., MINOR CHILD	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
	:	
APPEAL OF: G.S., FATHER	:	No. 1532 EDA 2013

Appeal from the Decree May 10, 2013
In the Court of Common Pleas of Wayne County
Civil Division at No(s): 6-AD-2012

IN RE: C.M.M.J., MINOR CHILD	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
	:	
APPEAL OF: G.S., FATHER	:	No. 1533 EDA 2013

Appeal from the Decree May 10, 2013
In the Court of Common Pleas of Wayne County
Civil Division at No(s): 8-AD-2012

BEFORE: GANTMAN, J., DONOHUE, J., AND OLSON, J.

MEMORANDUM BY GANTMAN, J.: **FILED DECEMBER 03, 2013**

Appellant, G.S. ("Father"), appeals from the decree entered in the Wayne County Court of Common Pleas, which involuntarily terminated Father's parental rights to his four minor children, K.S.J., S.R.J., D.I.J., and C.M.M.J. ("Children").[1] We affirm.

In it opinions, the trial court fully and correctly set forth the relevant facts of this case. Therefore, we have no reason to restate them. Procedurally, on August 27, 2012, Wayne County Children and Youth Services ("CYS") filed petitions for involuntary termination of Mother and Father's parental rights as to four of their minor children. The court held hearings on the petitions on March 5, 2013 and March 19, 2013. On May 10, 2013, the court entered an order involuntarily terminating Mother and Father's parental rights to K.S.J., S.R.J., D.I.J., and C.M.M.J. On June 3, 2013, Father timely filed a notice of appeal, along with a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i).

Father raises the following issues for our review:

[1] The court also terminated the parental rights of C.J. ("Mother"), who is not a party to this appeal. Mother has appealed the court's order at separate docket Nos. 1629-1632 EDA 2013.

> WHETHER THE TRIAL COURT ERRED IN NOT APPOINTING COUNSEL FOR CHILDREN DURING THE DEPENDENCY PROCEEDINGS AND AGAIN IN NOT APPOINTING COUNSEL [FOR] CHILDREN PRIOR TO [THE] BEGINNING OF THE TERMINATION PROCEEDINGS.
>
> WHETHER THE TRIAL COURT ERRED IN NOT FINDING THAT [CYS] INTERFERED WITH THE PLACEMENT OF [CHILDREN] WITH A…RELATIVE.
>
> WHETHER THE TRIAL COURT ERRED IN FINDING CYS PROVED THE ELEMENTS OF TERMINATION WITH RESPECT TO 23 PA.C.S.A. [§§] 2511(A)[(1)], 2511(A)(5) AND/OR 2511(A)(8) BY CLEAR AND CONVINCING EVIDENCE.
>
> WHETHER THE TRIAL COURT ERRED IN ITS FINDINGS OF FACT [WHICH] WERE NOT SUPPORT[ED] BY THE WEIGHT OR SUFFICIENCY OF THE EVIDENCE.
>
> WHETHER THE TRIAL COURT ERRED IN ITS FINDINGS OF FACT [WHICH] WERE AGAINST THE TOTALITY OF THE EVIDENCE.

(Father's Brief at (i)-(ii)).[2]

The standard and scope of review applicable in termination of parental rights cases are as follows:

> When reviewing an appeal from a decree terminating parental rights, we are limited to determining whether the decision of the trial court is supported by competent evidence. 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 it would give to a jury verdict.

[2] Father did not set forth a distinct and separate statement of the questions involved, in contravention with the Pennsylvania Rules of Appellate Procedure. ***See*** Pa.R.A.P. 2111(a); 2116. Instead, Father states his issues on appeal in the table of contents and throughout the argument portion of his brief.

> 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.
>
> Furthermore, we note that the trial court, as the finder of fact, is the sole determiner of the credibility of witnesses and all conflicts in testimony are to be resolved by [the] finder of fact. The burden of proof is on the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so.
>
> The standard of clear and convincing evidence means testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts in issue. We may uphold a termination decision if any proper basis exists for the result reached. If the trial court's findings are supported by competent evidence, we must affirm the court's decision, even though the record could support an opposite result.

In re Adoption of K.J., 936 A.2d 1128, 1131-32 (Pa.Super. 2007), *appeal denied*, 597 Pa. 718, 951 A.2d 1165 (2008) (internal citations omitted). ***See also In re Adoption of C.L.G.***, 956 A.2d 999, 1003-04 (Pa.Super. 2008) (*en banc*).

After a thorough review of the record, the briefs of the parties, the applicable law, and the comprehensive opinion of the Honorable Raymond L. Hamill, we conclude Father's first, third, fourth and fifth issues merit no relief. The trial court opinions discuss and properly dispose of those claims. (***See*** Trial Court Opinion and Decree, filed May 10, 2013, at 7-17; Trial Court Opinion, filed June 19, 2013, at 3-10) (finding: **(1)** court appointed attorney to act as guardian *ad litem* for Children throughout dependency proceedings; court appointed separate counsel to represent Children

throughout termination proceedings;[3] court satisfied 23 Pa.C.S.A. § 2313(a); **(3-5)**[4] under Section 2511(a)(1), Father did not regularly attend Children's medical appointments; Father continues to smoke around Children even though D.I.J.'s doctor told Father that D.I.J. should not be around cigarette smoke due to tumor in his ear; Father failed to attend and participate in some Individualized Education Program meetings for Children; for at least six months prior to filing of termination petition, Father demonstrated failure to perform parental duties; under Section 2511(a)(5), Children have been removed from Father's care for longer than six months; Father is unable to provide appropriate supervision or safe environment for Children; Father had been and continues to be unable to prevent Children from being perpetrators and/or victims of sexual abuse against each other; specifically, one of Father's children, A.J., perpetrated sexual abuse against some or all of Children after Mother and Father had signed safety plan stating that A.J. could not be left unsupervised with Children; Father is unable to rectify overly sexual atmosphere in his home; Father does not understand or appreciate extent and prevalence of sex offending that has occurred in his home and could occur again; conditions which led to Children's removal continue to exist; Father will not be able to remedy those conditions where

[3] At the termination proceedings, Children had the benefit of one attorney acting as their guardian *ad litem* and a separate attorney acting as their legal counsel.

[4] In his brief, Father combines his third, fourth and fifth appellate issues.

he cannot supervise Children properly or protect them from future abuse notwithstanding inordinate amount of services and assistance CYS provided to Father; Children have made strides in their respective placements away from Father; termination of Father's parental rights best serves interests of Children; under Section 2511(a)(8), Children have been removed from Father's care for three years; Children's need for permanent and stable family environment takes precedence over Father's recent professed "willingness" to avail himself of resources, which he has had ample time to utilize; conditions which led to removal of Children continue to exist; whatever bond remains between Father and Children is negative and harmful to development of Children; termination of Father's parental rights would best serve needs and welfare of Children).[5] Accordingly, we affirm on

[5] Father also includes a one-paragraph argument, claiming the trial court failed to address adequately the requirements under Section 2511(b). Father did not include this issue in his concise statement of errors complained of on appeal, did not present it as a separate question presented in his appellate brief, or properly develop this argument. Thus, Father's claim is waived on appeal. ***See Commonwealth v. Castillo***, 585 Pa. 395, 888 A.2d 775 (2005) (holding any issues not raised in Rule 1925 concise statement will be deemed waived on appeal); ***In re L.M.***, 923 A.2d 505 (Pa.Super. 2007) (explaining waiver rules under Rule 1925 apply in context of family law cases). ***See also*** Pa.R.A.P. 2116; 2119(a). Moreover, the court explained: (1) Father has demonstrated an inability to protect Children from perpetrating and/or becoming victims of sexual abuse; (2) whatever bond remains between Father and Children is negative and harmful to their development; (3) Children continue to exhibit troubling behavioral patterns Father will be unable to address; (4) Father is not capable of preventing further sexual abuse from occurring or providing a stable and nurturing environment for Children; and (5) termination of Father's parental rights is in Children's best interests under Section 2511(b). The record supports the court's determination. ***See In re Adoption of K.J., supra***.

the basis of the trial court's opinions as to Father's first, third, fourth and fifth issues on appeal.

With respect to Father's second issue on appeal, Father argues CYS had ample time to explore familial resources for Children prior to initiating termination proceedings. Father asserts CYS caseworker Natalie Burns admitted CYS had contact with a relative in 2010, but could not recall during the termination hearing whether CYS followed-up with that potential resource. Father contends Children had family members who agreed to act as a resource for some or all of Children, but CYS did not follow-up with them. Father emphasizes the importance of maintaining sibling connections. Father maintains Pennsylvania law requires CYS to give primary consideration to a fit and willing relative before placing a child in foster care or an alternative placement. Father concludes CYS' initiation of termination proceedings was premature where CYS failed to properly explore all familial resources who could care for Children; and this Court must reverse the court's order terminating Father's parental rights. We disagree.

The statute outlining the Kinship Care Program provides, in pertinent part:

> **§ 1303. Kinship Care Program**
>
> * * *
>
> **(b) Placement of children.—**If a child has been removed from the child's home under a voluntary placement agreement or is in the legal custody of the county agency, the county agency shall give first

> consideration to placement with relatives. The county agency shall document that an attempt was made to place the child with a relative. If the child is not placed with a relative, the agency shall document the reason why such placement was not possible.

62 P.S. § 1303(b). This Court explained:

> [K]inship care is a subset of foster care where the care provider already has a close relationship to the child. In kinship care (as with foster care generally), legal custody of the child is vested in [CYS]. [CYS] then places the child with the care provider. The court may place children with a foster family, although there might be willing relatives, where foster care is in the best interests of the children or aggravated circumstances exist. The goal of preserving the family unit cannot be elevated above all other factors when considering the best interests of children, but must be weighed in conjunction with other factors. ***In re Davis***, 502 Pa. 110, 125, 465 A.2d 614, 621 (1983).

In re Adoption of G.R.L., 26 A.3d 1124, 1127 (Pa.Super. 2011) (some internal citations and quotation marks omitted).

Instantly, Ms. Burns testified at the termination hearing that after CYS took custody of Children, CYS contacted Children's extended family, including Mother's father, brothers and a cousin, none of whom said they could care for Children. (***See*** N.T. Termination Hearing, 3/5/13, at 39-40.) Ms. Burns admitted that Mother had one cousin in New Jersey who said she might be interested in serving as a potential resource for Children, but that cousin had not seen Mother in twelve years. (***See id.*** at 40.) Regarding this particular cousin, **Mother** testified at the termination hearing that she informed CYS her cousin "wasn't a reliable source for my children being that

I haven't spoken to her or know anything that's happened with her." (N.T. Termination Hearing, 3/19/13, at 115-16).

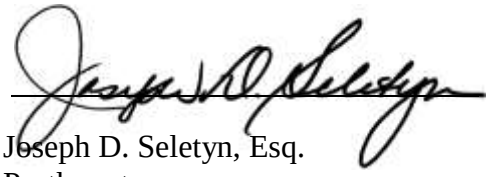
Additionally, Ms. Burns testified that she and another caseworker specifically asked Mother and Father to put together a list of potential family resources for Children and have them contact CYS; Mother and Father were unable to provide any family members to care for Children. (***See*** N.T., 3/5/13, at 40.) Further, Mother admitted that caseworker Nicole Carlson contacted Mother's family members to see if they were willing to act as a resource for Children. (***See*** N.T., 3/19/13, at 85.) Father also testified at the termination hearing that Mother's family was the only potential resource for Children, as his family members lived too far away or were deceased. (***See id.*** at 38.)

The record demonstrates that CYS made efforts to place Children with family members, but found no relative willing or able to act as a resource for Children. Significantly, Father has offered no specific relative who could have been an appropriate resource for Children. Furthermore, with respect to Father's contention that siblings should be placed together, the trial court explained that several of the children cannot be placed together due to their significant sexual abuse history and their sexually reactive behaviors with each other. (***See*** Trial Court Opinion, 5/10/13, at 5.) Thus, the placement of Children in foster care during the pendency of the proceedings was in their best interests. ***See*** 62 P.S. § 1303(b); ***In re Adoption of G.R.L.,***

supra. Based on the foregoing, we see no reason to disrupt the court's decision to terminate Father's parental rights. ***See In re Adoption of K.J., supra***. Accordingly, we affirm.

Decree affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/3/2013

IN THE COURT OF COMMON PLEAS OF THE 22ND JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF WAYNE

IN RE: K.S.J.	:	NO. 4-2012-Adoption

CONSOLIDATED WITH

IN RE: S.R.J.	:	NO. 5-2012-Adoption

CONSOLIDATED WITH

IN RE: D.I.J.	:	NO. 6-2012-Adoption

CONSOLIDATED WITH

IN RE: C.M.M.J.	:	NO. 8-2012-Adoption

OPINION and DECREE

Presently before this Court are Petitions for Involuntary Termination of Parental Rights filed by the Wayne County Children and Youth Services (hereinafter "WCCYS" or "Agency"). After a hearing held on Tuesday, March 5, 2013, and continued on Tuesday, March 19, 2013, this Court issues the following:

FINDINGS OF FACT

1. C.J. and G.S. are the natural parents of the subject children: K.S.J. (date of birth: 2005); D.I.J. (date of birth: 2004); S.R.J. (date of birth: 2003); and C.M.M.J. (date of birth: 2001).
2. The Petitioner, Wayne County Children and Youth Services, has legal custody of K.S.J., D.I.J., S.R.J., and C.M.M.J.
3. C.J. and G.S. are not married, but have resided together with their children in Cherry Ridge Township, Wayne County, Pennsylvania.
4. In October of 2008, the family moved from New York to Wayne County, Pennsylvania.
5. Contemporaneously with the family's move to Wayne County, New York CPS made a referral to WCCYS, and a case was opened for general protective services.
6. New York CPS was involved with the family after an older child, A.J., sexually offended against C.M.M.J., D.I.J., and a neighbor child.
7. New York CPS was involved with the family for at least a year and a half.
8. When the family relocated to Honesdale, Pennsylvania, seven children were living in the home; in addition to the four subject children were A.J., Je.J., and Ja.J.
9. WCCYS implemented a safety plan forbidding one of the older children, A.J, from being left unsupervised with any of the children due to the prior incidents of sexual abuse.
10. In 2010, WCCYS received reports from the Pennsylvania State Police that the children were playing in the road at a dangerous intersection and were unsupervised.

11. WCCYS received reports from the school that the children had lice, lacked cleanliness, and wore clothes smelling of urine.

12. Upon visiting the home, Agency workers discovered multiple household animals that were defecating and urinating in the house.

13. Due to the reported incidents, WCCYS applied for shelter care, and the children were removed from the home and placed in the care of WCCYS.

14. Since being removed from the home on April 16, 2010, K.S.J., D.I.J., S.R.J., and C.M.M.J. were found to be dependent, and the children have been in the legal custody of WCCYS.

15. At the time the children were removed from the home, C.J. was incarcerated as a result of an assault against a neighbor.

16. While in foster care, the subject children disclosed they were victims of sexual abuse perpetrated by A.J. and by Je.J. that occurred in Pennsylvania.

17. The sexual abuse by A.J. occurred despite the safety plan being in place and despite the family receiving services in both New York and Pennsylvania.

18. WCCYS had concerns about the health of D.I.J. as he suffered from medical issues related to his ear, specifically a tumor in his ear.

19. D.I.J. had four (4) different surgeries to address the tumor in his ear.

20. D.I.J.'s ear doctor has advised that D.I.J. should not be around cigarette smoke.

21. Both C.J. and G.S. were made aware of the fact that the doctor does not believe D.I.J. should be around cigarette smoke.

22. C.J. and G.S. continue to smoke; G.S. admits to continuing to smoke inside the house.

23. To address the cleanliness of the home, WCCYS provided the family with a dumpster, bought them a clothes dryer, and hired an exterminator.

24. To their credit, C.J. and G.S. have maintained the cleanliness in the home.

25. C.J. and G.S. continue to have multiple dogs in the home.

26. G.S. obtained full-time employment, in compliance with one of the conditions set by WCCYS.

27. To address the sexual abuse that occurred inside the home, both the parents and the children participated in the Kids Peace Sexual Issues Treatment Education ("S.I.T.E.") program.

28. C.J. and G.S. worked with a S.I.T.E. program therapist, Ms. Sears.

29. Even though she completed her work with S.I.T.E. approximately a year ago, C.J. has continued to work with Ms. Sears.

30. Despite her participation in S.I.T.E., C.J. still has issues with sexual boundaries; while residing with G.S., C.J. had another man living in the house with them, and the other man shared a bed with C.J.

31. In December 2011, C.J. was in a relationship with a man she met online; C.J., while living with G.S., became engaged to the man she met online.

32. Due to her relationship with the man online, C.J. missed two (2) visits with her children, and she came to some visits with hickeys on her neck.

33. In March of 2012, neighbor children of C.J. and G.S. reported that C.J. showed naked pictures of herself to the children; C.J. asserts that the neighbor children discovered C.J.'s modeling portfolio while on C.J.'s computer without her permission.

34. As a result of the neighbor children viewing the pictures of C.J., C.J. was indicated for sexual abuse, but she was acquitted of related criminal charges at a jury trial.

35. C.J. has been indicated for child abuse by omission or commission eleven (11) times.

36. Several of the children, K.S.J, D.I.J., and S.R.J., cannot be placed together due to their significant sexual abuse history and their sexually reactive behaviors with each other.

37. K.S.J. and D.I.J. need constant supervision and cannot be placed in a foster home together.

38. D.I.J. requires an escort to use the bathroom at school.

39. In approximately December 2011 or January 2012, WCCYS contacted G.S. about being the primary caretaker of the children in the event C.J. were no longer in the home. Even though C.J. was engaged to another man while residing with G.S. and C.J. intended to leave the home, G.S. refused to take advantage of the opportunity for the return of some of his children due to his insistence that he regain custody of all of his children. G.S. desires the

return of all his children despite the fact that there is an undisputed adverse sexual dynamic between some of the children.

40. After the goal was changed to Adoption in June 2012, C.J. and G.S. have not seen K.S.J., D.I.J., and S.R.J.

41. K.S.J. has a stronger bond with a former foster mother than with C.J.

42. While K.S.J. has been in placement at Hoffman Homes, K.S.J. has exhibited sexually acting out behavior; when discussing her sexually acting out behavior, K.S.J. states that she learned it from C.J.

43. The only time K.S.J. talks about C.J. is when K.S.J. discusses the sexually acting out behavior.

44. D.I.J. asks his caseworker if the caseworker has found a family for him.

45. S.R.J. has bonded with her current foster family.

46. C.M.M.J. continues to see C.J. and G.S. twice a month.

47. WCCYS's greatest concerns are that C.J. and G.S. have not demonstrated an understanding for the necessity of sexual boundaries, and C.J. and G.S. have not evidenced their commitment to enforcing sexual boundaries.

48. C.J. and G.S. , despite receiving the education through the S.I.T.E. program, are unable to put what they have been taught into practice.

49. WCCYS is concerned that the children will be re-offended against if the children are returned to the care of C.J. and G.S.

50. Despite the children facing formidable challenges while being reared in the C.J./G.S. household, they have made considerable strides in their placements.

51. C.J. and G.S. desire the return of all of their children to their home.

52. G.S. wants the return of all of his children, but he does not know how to prevent sexual abuse from happening again.

53. If the children were returned home, C.J. testified she would closely supervise them, keep the children apart, and enter them into programs.

54. C.J. was not aware of any sexual abuse in Pennsylvania until the children were removed from the home.

55. C.J. believes it is in the best interest of her children to continue to have contact with their parents.

DISCUSSION

Petitioner, WCCYS, requests the involuntary termination of the parental rights of C.J. and G.S. based upon 23 Pa.C.S. § 2511(a)(1), 2511(a)(5), or 2511(a)(8). Pursuant to 23 Pa.C.S. § 2511(a), parental rights may be terminated when:

> (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.
>
> ***
>
> (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.

When the Court has determined that the statutory grounds for termination under 23 Pa.C.S. § 2511(a) have been met, the Court must examine the best interests of the child under 23 Pa.C.S. § 2511(b). In re: Adoption of R.J.S., 901 A.2d 502, 507 (Pa. Super. 2006).

The Petitioner must establish by clear and convincing evidence the statutory grounds upon which termination is based. In re: Adoption of C.A.W., 683 A.2d 911, 914 (Pa. Super. 1996)(quoting Matter of Sylvester, 555 A.2d 1202, 1203-04 (Pa. 1989)). Clear and convincing evidence is evidence "that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts in issue." Id.

With regard to Section 2511(a)(8), the Petitioner must establish that "(1) the child has been removed from the care of the parent for at least twelve (12) months; (2) that the conditions which had led to the removal or placement of the child still exist; and (3) that termination of parental rights would best serve the needs and welfare of the child." In re Adoption of R.J.S., 901 A.2d 502, 511 (Pa. Super. 2006).

In the present matter, the Agency has clearly put forth evidence to establish that the children have been out of the care of C.J. and G.S. for three (3) years, as the children were originally removed in April 2010. Accordingly, the Agency has satisfied the

threshold requirement that the subject children were removed from their parents for at least twelve months.

According to the Agency Service Plan (Petitioner's Exhibit 14), the children were placed in foster care due to a lack of supervision and the disclosure of sexual abuse by Je.J. The Service Plan also indicates that the Family was originally accepted for service with the Agency due to concerns about household cleanliness. C.J. and G.S. have most certainly exhibited progress in the cleanliness of their home; however, the conditions which led to the *removal* and placement of the children continue to exist. The Agency has presented clear and convincing evidence that C.J. and G.S. are unable to provide the subject children with the required supervision to prevent further sexual abuse. As testified to by Agency Supervisor Natalie Burns, all subject children have been victims and/or perpetrators of sexual abuse. G.S. testified that he does not know how to prevent the children from sexually abusing each other. When asked what she would do differently to prevent the sexual abuse, C.J. initially testified that she would stop seeking out other men. When further directed that the questioning was about the sexual abuse of her children, C.J. stated that she would keep a close watch on her children.

C.J. and G.S. lack the aptitude to prevent their children from being perpetrators and/or victims of sexual abuse against each other. In 2008, both C.J. and G.S. were aware that an older child in the household (A.J.) had perpetrated sexual abuse against some of the younger children. Despite the services the family received through New York CPS and the signing of a safety plan wherein both parents agreed that A.J. could not be unsupervised with the younger children, A.J. again perpetrated sexual abuse against some or all

of the subject children in the household. It is clear to this Court that despite the countless hours of counseling and involvement with S.I.T.E., C.J. and G.S. are still unable to understand even the basic requirements of preventing their children from being victims and/or perpetrators again. Neither C.J. nor G.S. is equipped to prevent the subject children from being victims or perpetrators of sexual abuse, and neither parent is able to provide a safely supervised home life for the children.

Further, both C.J. and G.S. want all four of the subject children returned to the home notwithstanding the fact that the Agency and the children's treatment teams have found that K.S.J., D.I.J., and S.R.J. cannot live in the same household because they are sexually reactive with one another. This Court finds that C.J. and G.S. do not understand and appreciate the extent and prevalence of the sexual offending that occurred in the household. Ms. Burns testified that the Agency has the most concern about C.J. providing care to her children. C.J. exhibits poor judgment as to how her sexual conduct, or how she manifests her sexuality, is likely to be perceived by the children.[1]

Section 2511(a)(8) "requires only that the conditions continue to exist, not an evaluation of parental willingness or ability to remedy them." R.J.S., at 511-12. Furthermore, "a child's life cannot be held in abeyance while a parent attempts to attain the maturity necessary to assume parenting responsibilities. The court cannot and will not subordinate indefinitely a child's need for permanence and stability to a parent's claims of progress and hope for the future." Id. at 513. C.J. and G.S. both testified that they were willing to take any classes or participate

[1] C.J. had a portfolio of herself in various stages of undress. C.J. asserts it is her modeling portfolio. At the very least, C.J. failed to take the proper precautions to prevent the neighbor children from viewing the portfolio. Further, having a man share her bed while her longtime partner resides in the household is not a positive and healthy modeling of sexuality to her children.

in any requirements of the Agency in order to facilitate the return of the subject children. However, C.J. and G.S. were previously provided with counseling and a number of different types of services by the Agency, and C.J. and G.S. have simply failed to put into practice what they have been taught.

The third element of Section 2511(a)(8) requires the court to examine the best interests of the children. "The court must consider the needs and welfare of the children, including the presence of any parent-child emotional bond, which encompasses intangibles such as love, comfort, security, and stability." Id. at 514 (citing In re C.M.S., 884 A.2d 1284, 1287 (Pa. Super. 2005)).

As to each individual child, Ms. Burns testified that whatever bond still remains between the children and their parents is negative and that the bond is harmful to the development of the children. Ms. Burns testified that the subject children have made strides in their placements despite the challenges the parents have facilitated over the years. Since the placement goal was changed to Adoption in June 2012, the parents have not called K.S.J, D.I.J., or S.R.J. nor have the parents sent them any cards or gifts. C.J. and G.S. still have visits with subject child C.M.M.J.

In uncontradicted testimony, Ms. Burns testified that K.S.J. is more bonded to a former foster mother than she is to C.J. and G.S. Ms. Burns testified that while at Hoffman Homes Residential Facility, K.S.J. has exhibited sexually acting out behavior. K.S.J. only discusses C.J. in order to explain that she learned the sexually acting out behavior from C.J. Ms. Burns testified that K.S.J. is currently in emotional turmoil and that K.S.J. would benefit from the termination of C.J. and G.S.'s parental rights.

As to D.I.J., Ms. Burns testified that D.I.J. often asks his caseworker if the caseworker has a found a family for him. Ms. Burns testified that the smoking issue is probably frustrating for D.I.J. because he understands that he cannot be around cigarette smoke, and yet C.J. and G.S. continue to smoke. Ms. Burns also testified that D.I.J. loves his current placement.

As to S.R.J., Ms. Burns testified that S.R.J. often separated herself from the family. During previous visits with C.J. and G.S., S.R.J. would play by herself. Ms. Burns also testified that S.R.J. has bonded with her current foster family and that S.R.J. says she has two moms.

As to C.M.M.J., Ms. Burns testified that C.M.M.J. continues to see C.J. and G.S. twice a month. Ms. Burns testified that C.M.M.J. would not be upset if termination was granted, but he would be upset if he could never have contact with C.J. and G.S.

As to the bond between Mr. Smith and the children, Ms. Burns testified that G.S. is the disciplinarian and that he was passive during visits. Ms. Burns testified that G.S.'s relationship with the subject children is less close than C.J.'s relationship with the children. The Agency did not indicate any negative effects on the children following the suspension of the parents' visits with K.S.J., D.I.J., and S.R.J in June 2012. Accordingly, this Court finds that severing any parent-child bond which might still exist between C.J. and the subject children would be in the best interests of the subject children. This Court further finds that severing any parent-child bond which might still exist between G.S. and the subject children would be in the best interests of the subject children.

In addition to termination under Section 2511(a)(8), the Petitioners also sought termination under Sections 2511(a)(1) and 2511(a)(5). Once the Court finds that termination is proper under any one subsection of Section 2511(a), the Court must proceed to an analysis under Section 2511(b). In re B.L.W., 843 A.2d 380, 384 (Pa. Super. 2004). Even though this Court finds that termination is appropriate under Section 2511(a)(8), this Court will examine the other relevant sections.

As to Section 2511(a)(1), the Petitioner must establish that for at least six months prior to the filing of the termination petition, the parent demonstrated a settled intent to relinquish parental claim to a child or a refusal or failure to perform parental duties. There has been no evidence presented that C.J. or G.S. demonstrated a settled intent to relinquish their parental claim to the subject children. Both parents testified to their desire to have their children returned to them. However, Petitioner has presented clear and convincing evidence of the failure of C.J. and G.S. to perform their parental duties.

Neither parent regularly attended the medical appointments of the subject children despite the Agency's offer of transportation. D.I.J.'s ear tumor required four surgeries, and the parents only attended two of the surgeries. The parents failed to attend and participate in the multiple Individualized Education Program ("IEP") meetings regarding the children's educational needs. C.J. missed some visits with her children due to her relationship with a man other than G.S. Accordingly, this Court finds clear and convincing evidence that C.J. and G.S. failed to perform their parental duties.

With regard to Section 2511(a)(5), the Petitioner must establish that "(1) the child has been removed from parental care for at least six months; (2) the conditions which led to the

child's removal or placement continue to exist; (3) the parents cannot or will not remedy the conditions which led to removal or placement within a reasonable period of time; (4) the services reasonably available to the parents are unlikely to remedy the conditions which led to the removal or placement within a reasonable period of time; and (5) termination of parental rights would best serve the needs and welfare of the child." In re B.C., 36 A.3d 601, 607 (Pa. Super. 2012).

As previously established, the subject children came into the care of the Agency in April 2010, and the Agency filed the termination petitions in August and September 2012. The subject children have been removed from the care of C.J. and G.S. far beyond the six-month period.

As previously established, the conditions which led to the removal continue to exist. Further, this Court believes that the Agency provided clear and convincing evidence that the parents would be unable to remedy the conditions which led to placement. The parents have attempted for three years to remedy those conditions. The parents have made significant improvement in the cleanliness of their house; however, the parents are still deficient in supervision.

As to a determination of whether the services and assistance provided by the Agency were likely to remedy the conditions which led to the placement within a reasonable amount of time, this Court finds that the services and assistance provided by the Agency were more than adequate to remedy the conditions which led to the placement. As Ms. Burns testified, the Agency provided the parents and the children with an inordinate amount of services, including assistance with the cleanliness of the household and treatment for sexual issues within the

household. Ms. Burns testified that the parents had completed the treatment for sexual issues, but were unable to put into practice what they had been taught. It has been established by clear and convincing evidence that the services and assistance provided by the Agency for a period of three (3) years have been unable to remedy the conditions in the household. This Court further finds that any additional services and assistance by the Agency would be unable to remedy the conditions in the household in a reasonable amount of time.

Finally, as discussed previously, this Court finds that termination would best serve the needs and welfare of the subject children. Termination of the parental rights of C.J. and G.S. would allow the subject children to enhance their opportunities to be adopted by appropriate families.

This Court has found that the Petitioner has satisfied at least one statutory requirement under Section 2511(a). Accordingly, this Court will now proceed to a review under Section 2511(b). Pursuant to Section 2511(b), the Court must examine whether termination would best serve the developmental, physical, and emotional needs and welfare of the subject children. The Court must evaluate not only the bond between the subject children and the parents, but the "court can equally emphasize the safety needs of the child, and should also consider the intangibles, such as the love, comfort, security, and stability the child might have with the foster parent." In re A.S., 11 A.3d 473, 483 (Pa. Super. 2010).

As Ms. Burns testified, the subject children are currently placed in foster homes or in a residential facility. All of the subject children are currently in school, and the Agency and the Guardian ad Litem participate in the IEP meetings. C.J. and G.S. choose not to attend the meetings. Further, the Agency has been providing for the medical needs of the

children. As Ms. Burns testified, D.I.J. has received care for the tumor in his ear. K.S.J. has also received medical treatment due to mental health issues. All of the subject children have attended S.I.T.E. treatment at some point. Accordingly, the Agency has presented clear and convincing evidence that the developmental and physical needs and welfare of the subject children are being cared for by the Agency.

As to the emotional needs and welfare of the children, Ms. Burns' uncontradicted testimony established that the children's emotional needs and welfare are cared for by either current foster parents or former foster parents. K.S.J. is bonded to a former foster mother. D.I.J., S.R.J., and C.M.M.J. are bonded to current foster parents. While C.M.M.J. has indicated that he would like to return to the home of C.J. and G.S., Ms. Burns testified that C.M.M.J.'s wish arises out of C.M.M.J.'s desire to be without the rules that are imposed upon him in the foster home.

This Court finds that the safety needs and the security and stability of the children have not been addressed by the parents. One of the tasks assigned to C.J. and G.S. was to learn "how to protect their children from being sexually abused and how to changed [sic] the atmosphere in their house so all the children know sexual abuse will not be tolerated." (Petitioner's Exhibit 15, pg. F-16). The Agency has presented clear and convincing evidence to this Court that a family culture existed that facilitated an attitude amongst the siblings that they could be predators against one another. The Agency's request for termination is even more compelling because we have admitted sexually predatory behavior by A.J. on his siblings in New York, and yet the parents did not make any changes and allowed the same predator to prey on the younger subject children. During the protracted history of this case, during which time both

parents had visits with the subject children, the parents failed to demonstrate that they were capable of providing a stable and nurturing environment in which the subject children could safely grow. Despite the services provided to the C.J./G.S. household, the children still became victims and/or perpetrators; there is no reason for this Court to believe the outcome would be any different now.

Based upon the findings of fact and the foregoing discussion, this Court finds that the Petitioner has established by clear and convincing evidence the statutory grounds for termination under 23 Pa.C.S. § 2511(a). This Court further finds that the Petitioner has established by clear and convincing evidence that termination of C.J. and G.S.'s parental rights to all four subject children will serve the best interests of the children under 23 Pa.C.S. § 2511(b).

Accordingly, this Court enters the following:

DECREE NISI

AND NOW, to wit, this 10 day of May, 2013, after a hearing, it is HEREBY DECREED that the Parental Rights of C.S. and G.S. as to K.S.J, S.R.J., D.I.J., and C.M.M.J. are TERMINATED.

It is FURTHER ORDERED that Petitioner, Wayne County Children and Youth Services, is awarded full legal and physical custody of the four (4) minor children.

Further, C.S. and G.S. are HEREBY ADVISED of their right to file Post-Trial Motions to this Decree within thirty (30) days. Failure to file a Post-Trial Motion will result in this Decree becoming a final decree.

Additionally, C.S. and G.S. are ALSO ADVISED of their continuing right to place and update personal medical history information of file with the court and the Department of Public Welfare.

BY THE COURT

Raymond L. Hamill

RAYMOND L. HAMILL,
PRESIDENT JUDGE
22nd JUDICIAL DISTRICT

cc: Christine Rechner, Esq.
James E. Brown, Esq.
Salvatore J. Nardozzi, Jr., Esq.
Pamela S. Wilson, Esq.
Steven E. Burlein, Esq.

NH

Served 5/14/13 CBS

THE COURT OF COMMON PLEAS OF THE 22ND JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF WAYNE

IN RE:

K.S.J.	:	4-2012-AD
S.R.J.	:	5-2012-AD
D.I.J.	:	6-2012-AD
C.M.M.J.	:	8-2012-AD

STATEMENT OF REASONS

C.J. and G.S. (hereinafter "Appellants") appeal the Order of May 10, 2013 terminating parental rights to their four minor children. The Order resulted from a hearing on Petitions for Involuntary Termination of Parental Rights filed by the Wayne County Children and Youth Services (hereinafter "CYS" or "Agency").

FACTUAL BACKGROUND

Natalie Burns, a CYS supervisor, testified on behalf of CYS. Appellants each testified on their own behalf. CYS became involved with the family in October 2008 after New York CPS made a referral to CYS; a case was opened for general protective services. New York CPS was involved with the family for at least a year and a half after an older child, A.J., sexually offended against C.M.M.J., D.I.J., and a neighbor child. As a result, CYS implemented a safety plan forbidding A.J. from being left unsupervised with any of the children. Despite the plan, the sexual abuse reoccurred. To address the sexual abuse that occurred inside the home, both parents and the children participated in the Kids Peace Sexual Issues Treatment Education ("S.I.T.E.") program. C.J. is still working with a S.I.T.E. therapist however, she continues to have issue with sexual boundaries within the home.

In 2012 CYS received reports from P.A. State Police that the children were playing in the road unsupervised at a dangerous intersection. In addition CYS received reports from the school that the children had lice, lacked cleanliness, and wore clothes smelling of urine. Agency

workers discovered that multiple household animals, some of them very aggressive, were defecating and urinating in the home. Appellants continue to have multiple dogs in the home.

CYS provided Appellants with a dumpster, hired an exterminator, and bought them a clothes dryer to address the cleanliness of their home. CYS has also provided counseling to both Appellants and the children to address the sexual abuse that occurred within the home. At the termination hearing, it became clear that despite C.J.'s participation in counseling, she has ongoing issues with sexual boundaries. Appellants also continue to smoke despite their knowledge of D.I.J.'s serious ear condition, which is aggravated by cigarette smoke.

C.J. has been indicated for child abuse by omission or commission no fewer than eleven (11) times. Several of the children, K.S.J., D.I.J., and S.R.J., cannot be housed together due to their significant sexual abuse history and their sexually reactive behaviors with each other. K.S.J. and D.I.J. require constant supervision, and D.I.J. requires an escort to use the bathroom at school. K.S.J. has exhibited sexually acting-out behavior, which she states she learned from C.J.

After CYS' goal was changed from reunification to adoption in June 2012, Appellants did not make efforts to see K.S.J., D.I.J., or S.R.J, nor did they send cards, letters, or gifts. Appellants desire the return of all the children to the home, however, when asked how to prevent further sexual abuse, G.S. stated he does not know how to do so. G.S. also testified that the sexual abuse might have occurred when he was in the home on the computer. C.J. testified that she would "better supervise" the subject children and "place them into programs." CYS' greatest concern is Appellants' inability, despite extensive education and counseling, to understand the necessity for sexual boundaries and protect the children from further abuse.

Ms. Burns provided uncontroverted testimony that the subject children are content in their foster homes, and doing well, despite the challenges they face as a result of their sexual abuse history. CYS argued that freeing the subject children for adoption would not be detrimental to their well-being, but would offer an opportunity to safely live in a permanent, appropriate, nurturing family setting. Appellants testified that they would like for all of the subject children to be returned to their home.

MATTERS COMPLAINED OF ON APPEAL

Appellants assert that this Court erred a number of times in terminating their parental rights. The alleged errors, while numerous, can be addressed in three basic categories.

First, G.S. complains that this Court erred in failing to appoint counsel for the children during either the dependency proceedings or "prior to the beginning of the termination proceedings." It is not made clear in the Statement of Matters, but this Court will assume that G.S. means pursuant to 23 Pa. C.S. § 2313(a).

Second, Appellants assert that this Court erred in finding that CYS proved the elements of termination with respect to 23 Pa. C.S. § 2511(a), 2511(a)(5), and/or 2511(a)(8) by "clear and convincing" evidence. C.J. further asserts that the court erred in concluding that she failed to perform parental duties pursuant to 2511(a)(1) because (1) she was unaware of any sexual abuse in Pennsylvania thus, she could not rectify the issue and (2) she took D.I.J. to doctors both in New York and Pennsylvania for his ear problem on "numerous occasions."

Third, Appellants assert that this Court erred in (1) finding that 23 Pa. C.S. § 2511(b) was satisfied and (2) concluding that Appellants demonstrated a continued inability to provide a safe environment for the minor children and that they are incapable of remedying those conditions which originally led to placement of the children. C.J. additionally asserts that the Court failed to give significant weight to progress she has made through counseling, her efforts to quite smoking, and her willingness to take any classes and participate in any requirements of CYS to facilitate the return of the children.

I. Court Appointed Counsel for the Subject Children

G.S. complains on appeal that this Court erred in failing to appoint counsel for the children during either the dependency proceedings and prior to the beginning of the termination proceedings. Pursuant to 23 Pa. C.S. § 2313(a),

> (a) the court shall appoint counsel to represent the child in an involuntary termination proceeding when the proceeding is being contested by one or both of the parents. The court may appoint counsel or a guardian *ad litem* to represent any child who has not reached the age of 18 years and is subject to any other proceeding under this part whenever it is in the best interests of the child.

The purpose of 2313(a) "is to protect the interests of the child. Implicit in this appointment of counsel is a recognition that the interests of the child may be very different than or diverge from the interests of the other parties to the proceedings." In re Adoption of J.L., 769 A.2d 1182, 1185 (Pa. Super. 2001). In this matter, the Court appointed James Brown Esq. as guardian *ad litem* prior to any meaningful court proceeding and Steven Burlien Esq. represented the subject children throughout the termination hearing. The provision of the statute was satisfied. See: In re K.M., 53 A.3d 781 (Pa. Super. 2012). G.S.'s complaint has no merit.

II. Termination Pursuant to 23 Pa. C.S. § 2511(a)

Appellants also assert that this Court erred in finding that CYS proved the elements of termination with respect to 23 Pa. C.S. § 2511(a), 2511(a)(5), and/or 2511(a)(8) by "clear and convincing" evidence.

A two-part test is used for the involuntary termination of parental rights. The first prong focus on the conduct of the parent or parents, and the party seeking termination must prove by "clear and convincing evidence" that the parent's conduct satisfies the statutory grounds for termination. In re C.L.G., 956 A.2d 999 (Pa. Super. 2008). Only if the court determines that the parent's conduct warrants termination does the court engage in the second part of the analysis: an evaluation of the needs and welfare of the child. In re S.D.T., Jr., 934 A.2d 703 (Pa. Super. 2007).

This Court has an interest not only in family reunification but also in each child's right to a stable, safe, and healthy environment. In re Adoption of R.J.S., 901 A.2d 502 (Pa. Super. 2006). A parent's basic constitutional right to the custody and rearing of his or her child is converted, upon the parent's failure to fulfill his or her parental duties, into the child's right to have proper parenting and fulfillment of his or her potential in a permanent, healthy, safe environment. In re T.D., 949 A.2d 910 (Pa. Super. 2008); In re K.Z.S., 946 A.2d 753 (Pa. Super. 2008). In a termination proceeding, the Court's analysis should focus on whether termination of parental rights would best serve the developmental, physical, and emotional needs and welfare of the children. In re E.M.I., 57 A.3d 1278 (Pa. Super. 2012).

A. Parental Conduct Warranting Termination

There are certain "irreducible minimum requirements" that parents must provide for their children. In re B.L.L., 787 A.2d 1007 (Pa. Super. 2001). A parent who cannot or will not meet the requirements within a reasonable time following intervention may properly be considered unfit and have his or her parental rights terminated. Id. Statutory grounds for termination of parental rights are not limited to affirmative misconduct; they may include failures to perform parental duties. In re E.A.P., 944 A.2d 79 (Pa. Super. 2008); In re A.L.D., 797 A.2d 326 (Pa. Super. 2002). The party seeking termination must prove by "clear and convincing evidence" that the parent's conduct satisfies at least one of the nine statutory grounds for termination. In re B.C., 36 A.3d 601 (Pa. Super. 2012).

In this matter, CYS raises three statutory grounds for termination pursuant to 23 Pa. C.S.§ 2511(a):

> (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.
>
> ***
>
> (5) The child has been removed from the care of the parent by the court or under 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 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 or parental rights would best serve the needs and welfare of the child.

The burden is upon CYS in this matter to prove by clear and convincing evidence that its asserted grounds for seeking the termination of parental rights are valid. In re K.M., 53 A.3d 781 (Pa. Super. 2012). The evidence must be sufficiently "clear, direct, weighty, and convincing" so as to enable the trier of fact to come to a clear conviction, "without hesitation as to truth of the

facts" supporting one or more of the statutory grounds necessary to support such termination of parental rights. In re Julissa O., 746 A.2d 1137 (Pa. Super. 2000); In re S.D.T., Jr., 934 A.2d 703, 706 (Pa. Super. 2007).

As to section 2511(a)(8), CYS clearly and convincingly established (1) the children have been removed from the care of the Appellants for at least twelve (12) months; (2) the conditions which led to the removal of the children continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the children. In re Adoption of R.J.S., 901 A.2d 502, 511 (Pa. Super. 2006).

The subject children came into the care of CYS in April 2010. CYS filed for termination in August and September 2012. The children have been removed from the care of C.J. and G.S. for three (3) years, far longer than is required by statute.

CYS clearly established that despite countless hours of counseling and personal instruction by CYS, C.J. and G.S. remain unable to provide appropriate supervision for the subject children or a safe environment for the subject children. C.J. and G.S. have been, and would be, unable to prevent their children from being perpetrators and/or victims of sexual abuse against each other. In 2008, both Appellants were aware that A.J. had perpetrated sexual abuse against some of the younger children. Despite New York CPS' assistance and a safety plan purportedly agreed upon by both parents stating that A.J. could not be unsupervised with the younger children, A.J. again perpetrated sexual abuse against some or all of the subject children in the household. G.S. testified that the abuse might have occurred while he was in the home. C.J. complains on appeal that she was unable to prevent the abuse in Pennsylvania because she was "unaware" it was occurring. Whether or not C.J. was "aware" of the abuse in Pennsylvania is irrelevant. She and G.S. both signed off on a safety plan protecting the subject children from A.J. and both Appellants were unable to provide the minimal supervision necessary to prevent the sexual abuse that subsequently occurred. Additionally, Ms. Burns testified that both Appellants have been unable to rectify the overly sexual atmosphere within the home. C.J. in particular is unable to understand or implement sexual boundaries.

Both Appellants wish for all four of the subject children to be returned to the home even though CYS and the children's treatment teams have found that K.S.J., D.I.J., and S.R.J. cannot live in the same household because they are sexually reactive with one another. Appellants simply do not understand or appreciate the extent and prevalence of the sexual offending that has occurred and which may occur again.

As to both C.J.'s and G.S.'s complaints on appeal that they are "willing to take any classes or participate in any requirements" of CYS in order to facilitate the return of the subject children, "willingness" at this point is simply not enough.

> We recognize that the application of Section (a)(8) may seem harsh when the parent has begun to make progress toward resolving the problems that had led to removal of her children. However, by allowing for termination when the conditions that led to removal of a child continue to exist after a year, the statute implicitly recognizes that a child's life cannot be held in abeyance while a parent attempts to attain the maturity necessary to assume parenting responsibilities. The court cannot and will not subordinate indefinitely a child's need for permanence and stability to a parent's claims of progress and hope for the future.

In re Adoption of R.J.S., 901 A.2d 502, 513 (Pa. Super. 2006). In the instant matter, Appellants have had an abundance of resources and three years to put into practice what has been taught to them time and time again. They have simply been unable to do so. The subject childrens' need for a permanent and stable family environment in which to grow up must now take precedence over Appellants' claims of progress or "willingness."

CYS was also able to establish clearly and convincingly that the best interests of the children would be served by termination. The third and final element of Section 2511(a)(8) requires the court to consider the parent-child bond and intangibles such as "love, comfort, security and stability." In re C.M.S., 884 A.2d 1284, 1287 (Pa. Super. 2005).

Ms. Burns's testified that as to each individual child, whatever bond remains between each child and each parent is negative. Furthermore, Ms. Burns stated that the bond is harmful to the development of each child. Ms. Burn's testimony makes clear that the children continue to exhibit troubling behavior patterns that the Appellants would not be able to deal with appropriately. CYS did not indicate any negative effects on the children following the suspension of the Appellants' visits with K.S.J., D.I.J., and S.R.J. in June 2012. As to C.M.M.J., Ms. Burns

testified that while C.M.M.J. continues to see Appellants twice a month, C.M.M.J. would not be upset if termination was granted, but would like to continue having contact. Accordingly, this court did not err in finding that termination would be in the best interest of the children.

CYS also sough termination under Sections 2511(a)(1) and 2511(a)(5). Although the statute only requires that termination be proper under any one subsection, this Court also examined grounds for termination under the other subsections.

As to section 2511(a)(1), CYS presented clear and convincing evidence that for a period of at least six months prior to the filing of the termination petition, both appellants demonstrated a failure to perform parental duties. Neither parent regularly attended the medical appointments of the subject children despite being able. D.I.J.'s ear tumor has required multiple surgeries, some of which Appellants have not been present for. Appellants have been made aware by D.I.J.'s doctor that D.I.J. should not be around cigarette smoke. Appellants continue to smoke around D.I.J. which frustrates him immensely. Appellants also failed to attend and participate in the multiple Individualized Education Program ("IEP") meetings regarding the children's educational needs. Lastly, C.J. missed several visits with her children due to her relationship with a man other than G.S.

As to section 2511(a)(5), CYS presented clear and convincing evidence that (1) the children have been removed from parental care for at least six months; (2) the conditions which led to the child's removal or replacement continue to exist; (3) the parents cannot or will not remedy the conditions which led to removal or placement within a reasonable period of time; (4) the services reasonably available to the parents are unlikely to remedy the afore mentioned conditions within a reasonable period of time; and (5) termination of parental rights would best serve the needs of the child and welfare of the child. In re B.C., 36 A.3d 601, 607 (Pa. Super. 2012).

As previously established, the subject children came into the care of CYS in April 2010, and CYS filed for termination in August and September 2012. The children have been removed from the care of C.J. and G.S. in great excess of six months.

As previously established, the conditions that led to removal continue to exist and CYS has provided clear and convincing evidence that Appellants would not be able to remedy those

conditions. Appellants have had three years to take advantage of their training and put into practice what they have been taught. The services and assistance provided by CYS were more than adequate to remedy the conditions which led to placement. Despite the inordinate amount of services provided to them, Appellants are deficient in that they cannot supervise their children properly, cannot understand or appreciate the extent of the sexual abuse which took place, and cannot protect their children from further sexual abuse.

Finally, as discussed previously, this Court finds that termination would best serve the needs and welfare of the children. Termination of the parental rights of Appellants would allow the children to enhance their opportunities to be adopted by appropriate families.

This court did not err in finding that Appellants' conduct satisfies the statutory grounds for termination pursuant to 23 Pa. C.S. 2511(a). CYS presented evidence to support such a finding, and the evidence was clear and convincing. Appellants' complaint is mertiless.

B. Needs and Welfare of the Child Pursuant to 23 Pa. C.S. § 2511(b)

Appellant asserts that the Court erred in finding the needs and welfare of the child were best met by termination. Pursuant to 23 Pa. C.S.§ 2511(b),

> (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.

In determining termination, the court must take into account whether a natural parental bond exists between child and parent and whether termination would destroy an "existing, necessary, and beneficial relationship." Id. The mere existence of an emotional bond between parent and child does not preclude the termination of parental rights. In re K.M., 53 A.3d 781 (Pa. Super. 2012). While a parent's emotional bond with his or her child is a major aspect of the best-interest analysis in a termination of parental rights proceeding, it is nonetheless only one of many factors to be considered by the court when determining what is in the best interest of the child. In re N.A.M., 33 A.3d 95 (Pa. Super. 2011).

In addition to a bond examination in the best-interest analysis in a termination of parental rights proceeding, the trial court can equally emphasize the safety needs of the child. Id. The extent of the bond-effect analysis in determining best interests of the child in a termination of parental rights proceeding necessarily depends on the circumstances of the particular case. Id.

In this case, Appellants have demonstrated an inability to protect the subject children from perpetrating and/or becoming victims of sexual abuse. There is a serious threat to the safety of the subject children. Furthermore, Ms. Burns testified that, as to each child, whatever bond remains between the children and their parents is negative and that the bond is harmful to the development of the children. Ms. Burns's testimony makes clear that the children continue to exhibit troubling behavior patterns that the Appellants would not be able to address.

CYS did not indicate any negative effects on the children following the suspension of the Appellants' visits with K.S.J., D.I.J., and S.R.J. in June 2012. As to C.M.M.J., Ms. Burns testified that while C.M.M.J. continues to see Appellants twice a month, C.M.M.J. would not be upset if termination was granted, but would like to continue having contact.

The record is ripe with documentation of CYS' efforts to keep the subject children in the home and the family unit intact. Appellants were provided with an inordinate amount of resources and numerous opportunities to put into practice what the have learned. They have simply failed to do so. CYS has persuaded this court by clear and convincing evidence that Appellants are not capable of preventing further sexual abuse from occurring within the home nor are they capable of providing a stable and nurturing environment for the subject children. Accordingly, this court did not err in finding that termination would be in the best interest of the children.

Therefore, for the aforementioned reasons, as well as this Court's Opinion issued May 2013, incorporated herein by reference, this Court finds its Order granting termination to be in the best interests of the subject children. Furthermore, this Court finds that there is no issue which merits an appeal of the termination of Appellant's parental rights. Accordingly, this Court respectfully requests the Superior Court to find no merit in Appellant's appeal.

BY THE COURT:

Raymond L. Hamill

RAYMOND L. HAMILL,
PRESIDENT JUDGE
22ND JUDICIAL DISTRICT

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CSM

Served 6-21-13 ECS