

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: TERMINATION OF PARENTAL
RIGHTS H.A.D.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: P.J.D., NATURAL MOTHER

No. 1024 MDA 2013

Appeal from the Orders May 8, 2013
in the Court of Common Pleas of Lebanon County
Orphans' Court at No.: 2013-00239

BEFORE: FORD ELLIOTT, P.J.E., SHOGAN, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.

FILED DECEMBER 17, 2013

This is the second of two companion cases. Specifically, this appeal, docketed at No. 1024 MDA 2013, is related to another appeal filed by P.J.D. (Mother), docketed at No. 995 MDA 2013. For the sake of judicial economy and ease of disposition, we will address the issues Mother raises in both appeals together in this memorandum. In these companion cases, Mother appeals from the orders granting the petitions filed by Lebanon County Children and Youth Services (LCCYS) to terminate her parental rights to her daughter, H.D., also known as H.A.D. (Child), and to change Child's goal to adoption.¹ We affirm.

* Retired Senior Judge assigned to the Superior Court.

¹ Child's father voluntarily relinquished his parental rights.

Child was born in May of 2002. Child's father, E.N.D. (Father) was incarcerated at the Rockview State Correctional Facility at the time of the hearing in this matter, and has not been involved in any proceedings regarding Child except to appear briefly by phone at the hearing to consent to the termination of his parental rights. (**See** N.T., 5/06/13 (N.T.), at 6-7).

LCCYS first became involved with Child in July of 2011 due to the unsafe and unsanitary condition of Mother's home. (**See id.** at 8-10). LCCYS filed a petition for dependency on behalf of Child after Mother failed to rectify these conditions within six months, despite the support LCCYS provided for Mother. (**See id.** at 10-11). The trial court adjudicated Child dependent on January 16, 2012. LCCYS placed Child with her maternal aunt and uncle (Aunt and Uncle) in August of 2012, where she continued to reside at the time of the hearing on May 6, 2013. (**See id.** at 127-28). Aunt and Uncle are an adoptive resource for Child. (**See id.** at 128).

LCCYS established the following goals for Mother in her permanency plan: 1) cooperate with LCCYS and all its recommendations; 2) sign all necessary releases; 3) attend all outpatient therapy appointments and follow-through with therapist recommendations; 4) continue with mental health and housing services, and follow all recommendations; 5) make child support payments to Domestic Relations as required; 6) continue with medication management and take all medications as prescribed; 7) complete an approved parenting course; 8) visit Child regularly; and 9) maintain a clean and healthy home for four to six months. (**See id.** at 17-19).

LCCYS ultimately determined that Mother was unable to maintain a clean and healthy home, and filed its petition to terminate Mother's and Father's parental rights and to change Child's goal to adoption on April 1, 2013. The trial court held a hearing on that petition on May 6, 2013, and entered orders terminating Mother's and Father's parental rights and changing Child's goal to adoption on May 8, 2013. Mother timely filed her notices of appeal and statements of errors complained of on appeal on June 5, 2013. **See** Pa.R.A.P. 1925(a)(2)(i).² This Court granted Mother permission to file a single brief in her appeals in an order entered June 28, 2013.

Mother presents the following questions for our review:

1. Did the trial court abused [sic] its discretion in changing the Primary Permanency Plan Goal from "Return to Parent, Guardian or other Custodian" to "Place for Adoption" as Mother had and was making significant progress on her Permanency Plan goals?
2. Did the trial court abuse its discretion in changing the Primary Permanency Plan Goal form [sic] "Return to Parent, Guardian or other Custodian" to "Place for Adoption", rather than changing it to the concurrent Permanency Goal of Placement in Another Planned Living Arrangement Intended to be Permanent?
3. Based on the totality of the circumstances did the trial court commit an error of law or abuse its discretion by finding [LCCYS] established all the elements necessary to involuntary terminate Mother's parental rights by clear and convincing evidence?

(Mother's Brief, at 5).

² The trial court filed a Rule 1925(a) opinion on July 3, 2013, in which it addressed the issues raised in this appeal and the related appeal docketed at 995 MDA 2013. **See** Pa.R.A.P. 1925(a)(2)(ii).

Our scope and standard of review in cases involving the termination of parental rights 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 we would give to a jury verdict.

. . . In a proceeding to involuntarily terminate parental rights, the burden of proof is upon 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 is defined as testimony that is 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.

Moreover, an abuse of discretion occurs "when the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill will."

In re C.L.G., 956 A.2d 999, 1003-04 (Pa. Super. 2008) (*en banc*) (citations omitted).

The trial court concluded that termination was appropriate under section 2511(a)(8) of the Adoption Act. **See** 23 Pa.C.S.A. § 2511(a)(8). Therefore, we first inquire whether LCCYS carried its burden of proof under that subsection. We then review the record regarding whether LCCYS carried its burden of proof under section 2511(b) of the Adoption Act. "[S]atisfaction of the requirements in only **one** subsection of Section

2511(a), along with consideration of the provisions in Section 2511(b), is sufficient for termination.” *In re Z.S.W.*, 946 A.2d 726, 729 (Pa. Super 2008) (emphasis in original) (citation omitted).

The statutory bases for termination pursuant to section 2511(a)(8) and (b) are as follows:

§ 2511. Grounds for involuntary termination

(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:

* * *

(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.

* * *

(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(a)(8),(b).

Further, the prevailing case law requires us to engage in a discussion of whether the requirements of section 2511(b) were satisfied if we determine that the requirements of section 2511(a)(8) were satisfied. **See *In re C.M.S.***, 884 A.2d 1284, 1286-87 (Pa. Super. 2005), *appeal denied*, 897 A.2d 1183 (Pa. 2006). Under section 2511(b), we examine whether termination of parental rights would best serve the developmental, physical and emotional needs and welfare of the child. **See *id.*** at 1286. “Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child.” ***Id.*** at 1287 (citation omitted). “The court must also discern the nature and status of the parent-child bond, with utmost attention to the effect on the child of permanently severing that bond.” ***Id.*** (citation omitted).

We note our standard of review of a change of goal for a child:

When we review a trial court’s order to change the placement goal for a dependent child to adoption, our standard is abuse of discretion. In order to conclude that the trial court abused its discretion, we must determine that the court’s judgment was manifestly unreasonable, that the court did not apply the law, or that the court’s action was a result of partiality, prejudice, bias or ill will, as shown by the record. We are bound by the trial court’s findings of fact that have support in the record. The trial court, not the appellate court, is charged with the responsibilities of evaluating credibility of the witnesses and resolving any conflicts in the testimony. In carrying out these responsibilities, the trial court is free to believe all, part, or none of the evidence. When the trial court’s findings are supported by competent evidence of record, we will affirm even if the record could also support an opposite result.

Next, we note that in matters of placement for a dependent child, the trial court must be guided by the best interests of the child-not those of his or her parents.

Placement of and custody issues pertaining to dependent children are controlled by the Juvenile Act, which was amended in 1998 to conform to the federal Adoption and Safe Families Act (ASFA). The policy underlying these statutes is to prevent children from languishing indefinitely in foster care, with its inherent lack of permanency, normalcy, and long-term parental commitment. Consistent with this underlying policy, the 1998 amendments to the Juvenile Act, as required by the ASFA, place the focus of dependency proceedings, including change of goal proceedings, on the child. Safety, permanency, and well-being of the child must take precedence over **all** other considerations, including the rights of the parents.

When the child welfare agency has made reasonable efforts to return a foster child to his or her biological parent, but those efforts have failed, then the agency must redirect its efforts towards placing the child in an adoptive home. This Court has held that the placement process should be completed within 18 months.

While this 18-month time frame may in some circumstances seem short, it is based on the policy that a child's life simply cannot be put on hold in the hope that the parent will summon the ability to handle the responsibilities of parenting.

In re S.G., 922 A.2d 943, 946-947 (Pa. Super. 2007) (citations, quotation marks, and footnotes omitted) (emphasis in original).

Mother first claims that the trial court erred in changing Child's goal to adoption because she has made significant progress toward reaching the goals in her permanency plan and that therefore it would not be in the best interest of Child to change her goal to adoption. (**See** Mother's Brief, at 13-19). LCCYS maintains that a goal change is necessary because Mother has

made no progress in her ability to maintain a habitable home for Child. (**See** LCCYS' Brief, at 6).

Elizabeth Martin, the LCCYS caseworker assigned to this matter, testified that Mother cooperated with LCCYS and followed LCCYS' recommendations and signed all the necessary releases as requested. (**See** N.T., at 17). She also testified that Mother attended outpatient therapy regularly and followed the therapists recommendations, and had cooperated with housing services, but was not receiving those services at the time of the hearing as she no longer had a home of her own. (**See id.** at 17-18). According to Ms. Martin, Mother was paying child support to Domestic Relations but she was frequently in arrears because she was unemployed throughout most of LCCYS' involvement in this matter. (**See id.** at 18, 28). Mother's arrearages as of April 11, 2013, were \$202.64. (**See id.** at 28). Mother continued her medication management as requested and took her medication as prescribed. (**See id.** at 18).

Mother has visited regularly with Child but there were concerns regarding what Mother told Child during the visits about where Child would be living. (**See id.** at 18). Consequently, LCCYS scheduled the visits at its offices. (**See id.**). Mother maintained regular telephone contact with Child, visited with her regularly, and provided birthday and Christmas presents for her. (**See id.** at 18, 155-56). Just before the May 6, 2013, hearing, however, Mother missed two telephone calls scheduled with Child. (**See id.** at 147-48). Mother insisted that she missed these calls because of

confusion regarding her recent move to the Agape shelter. (**See id.**). Ms. Martin, however, testified that after Mother missed the first call on February 18, 2013, she gave Mother the opportunity to make up that call the following day, but Mother “forgot” the makeup call. (**Id.** at 43). Mother missed a second phone call on March 18, 2013, because she had fallen asleep. (**See id.** at 44).

Mother admittedly made progress toward completion of some of the above goals, but LCCYS caseworker, Jennifer Garrison, who became involved with the case in July of 2011, testified that Mother’s home was in such deplorable condition that it was unsafe for Child to reside there. (**See id.** at 8-9). According to Michael Deaven, an adult resource coordinator employed by Lebanon County Mental Health Early Intervention, Mother’s home was clean when he initially began working with her in April of 2011, but the condition of the home deteriorated dramatically within about three weeks. (**See id.** at 107-08, 121-22). Ms. Garrison indicated that, as of July 2011, the home remained dirty and cluttered, that there were no clear paths to walk through the home, and that there were toys, clothes, food, empty food containers and other items strewn throughout the home, including in the living room, stairwell and in Child’s bedroom. (**See id.** at 14-15).

In addition to the condition of the home, Ms. Garrsion testified that Child had mental health issues and that the relationship between Child and Mother was “very skewed.” (**Id.** at 9). Prior to Ms. Garrison’s involvement with the case, Child had already been voluntarily removed from the home

and services had been put in place to assist Mother with her living conditions as well as the mental health of both Mother and Child. (**See id.** at 11). Specifically, Mother and Child had been receiving case management services through Lebanon County Mental Health, and medication management services, behavioral health services, and supportive housing services through Philhaven and LCCYS. (**See id.** at 11-12).

Ms. Garrison monitored the condition of Mother's home for six months by way of weekly to biweekly, unannounced home visits. (**See id.** at 10). Because there was no improvement in the condition of the home in that time, and Child's behaviors were getting worse, LCCYS took protective custody of Child in January of 2012. (**See id.**).

Caseworker Elizabeth Martin continued to visit Mother's home for ten months, from January through October of 2012. (**See id.** at 21). Upon her initial visit, she found the home maintained at the same level of disorder and dirtiness described by Ms. Garrison. (**See id.** at 19). In fact, she described the home as being "very disorganized, very cluttered, very messy." (**Id.** at 21). She explained that there were clothes and toys everywhere, dirty dishes and food on the floor and in the sink, trash on the floor and on the tables, and that the condition of the home was just overall very dirty. (**See id.** at 21-22). Photographs taken by Ms. Martin at each of her visits to Mother's home were submitted into evidence in this matter and revealed that the conditions of the home remained relatively unchanged through the time Mother moved from the home in November of 2012. (**See id.** at 20-

21; LCCYS Exhibit 2). Ms. Martin discussed the condition of the home with Mother at every visit. (**See** N.T., at 22). Ms. Martin advised Mother that despite her compliance with the other goals, the fact remained that LCCYS removed Child from the home because it was not safe for Child to live there, and she stressed with Mother the importance of complying with the housing goal. (**See id.** at 24).

Ms. Martin scheduled monthly meetings with Mother, and a representative from Supportive Housing. (**See id.** at 22). At these meetings, Ms. Martin addressed her concerns and made suggestions to Mother as to how she could resolve the problem. (**See id.**). Mother seemed overwhelmed with the idea of cleaning an entire room at one time, so Ms. Martin suggested that she clean off the kitchen table or a small area that Ms. Martin "tap[ed]-off." (**Id.** at 22; **see id.** at 23). Ms. Martin stated that Mother was able to clean these small areas, but that her hoarding tendencies eventually took over and she soon covered these areas with clutter and filth. (**See id.** at 23). Uncle testified that Mother has been unable to improve the condition of any of her homes to a reasonable condition in at least the last twenty years. (**See id.** at 129-130).

Mother remained unemployed throughout a majority of the Agency's involvement with her, but finally obtained seasonal employment at a Wal-Mart in November of 2012. (**See id.** at 27-28). Her lack of employment resulted in her inability to pay rent and the loss of her home on November 24, 2012. (**See id.** at 25). Mother then moved in with her mother but Ms.

Martin was denied access to that home. (**See id.**) Ms. Martin testified that it was her understanding that the landlord of that home was not aware that Mother was staying at the residence and, further, that Mother was sleeping on the couch because the spare room was so cluttered that she could not use it. (**See id.** at 25-26). Mother left her mother's home on February 18, 2012, and moved to Agape Shelter. (**See id.** at 26).

Since moving to Agape Shelter, Mother has been responsible for keeping her private bedroom, cabinet and refrigerator clean as well as for performing weekly chores to clean certain common areas of the shelter. (**See id.** at 26-27). Both Ms. Martin and Cynthia Smith, the director of the Agape Shelter, testified that Mother keeps the areas that she is in charge of in the shelter very clean. (**See id.** at 27, 173, 175). Ms. Smith's testimony made it clear that there are certain expectations of residents of the shelter as well as strict guidelines to enforce those expectations. (**See id.** at 173-175, 178). In addition, Mother acknowledged that she was not permitted to take the items that formerly cluttered her home to the shelter, being permitted to bring only the "bare minimum" of personal items. (**Id.** at 167; **see id.** at 167-68). The trial court considered Mother's compliance at the shelter with her formerly cluttered private home and concluded:

While [M]other has followed through on some recommendations since [LC]CYS became involved[,] she continues to be unable to maintain a safe home for [Child], despite over 18 months of assistance. Although she is having success at the Agape Shelter, this is not a permanent residence. We find that this success will likely not carry over to her own residence.

(Trial Court Opinion, 7/03/13, at 11).

Mother does not have any intention to move into another home at any time in the foreseeable future and indicated that Child may be able to reside with her at the shelter in the future. (**See** Mother's Brief, at 18). Mother acknowledged that she was unable to care for her home. (**See id.**) According to Mother, her housing problems were due to "depression, which was compounded by her financial circumstances," and she said that her caseworkers acknowledged that her depression played a role in her inability to maintain her apartment. (**Id.**). Mother, however, specifically testified that she had her prescription issues resolved and has been on proper medications for her depression and medical issues since May of 2012, leaving her feeling more energetic and focused with an overall better outlook on life. (**See** N.T., at 152, 158-59). We note, though, that six months passed from the time Mother claims her depression was under control until she left her home in November of 2012, and she had still not corrected the conditions that had led to Child's placement.

Craig Clearwater, Child's outpatient psychotherapist, who has been treating her for attention deficit hyperactivity disorder and oppositional defiant disorder, testified that Child is doing well in her current foster home placement with Aunt and Uncle. (**See id.** at 81-82, 88). Child has specifically expressed a desire not to return to Mother's care and has expressed to Mr. Clearwater and her Law Guardian her desire that Aunt and

Uncle adopt her. (**See id.** at 88, 187-88). Aunt and Uncle wish to adopt Child. (**See id.** at 128).

Ms. Martin testified that Child had behavioral problems with her attitude regarding school during a prior kinship arrangement, but is reportedly doing very well in school now, keeps her room clean, handles her responsibilities well, and has made friends easily since her transfer to the care of her Aunt and Uncle in August of 2012. (**See id.** at 30-32). Since her current placement, issues such as hitting and frequently being off-task have improved to the point where hitting is no longer a problem and she is easily redirected when she becomes off-task. (**See id.**). She does not exhibit any significant behavioral or emotional concerns. (**See id.** at 32).

Our examination of the record reveals that the trial court did not abuse its discretion when it changed Child's goal to adoption. Mother's first claim of error is without merit.

In her second issue, Mother claims that the trial court erred in not changing Child's goal to another planned living arrangement intended to be permanent. (**See** Mother's Brief, at 20). Section 6351(f) of the Juvenile Act provides that where a child has been declared dependent and has been in placement for at least fifteen of the past twenty-two months, the child may be placed for adoption unless,

(i) the child is being cared for by a relative best suited to the physical, mental and moral welfare of the child;

(ii) the county agency has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or

(iii) the child's family has not been provided with necessary services to achieve the safe return to the child's parent, guardian or custodian within the time frames set forth in the permanency plan.

42 Pa.C.S.A. § 6351(f)(9)(i)-(iii).

Mother claims that a concurrent goal of placement in another planned living arrangement intended to be permanent should have been established in this matter rather than the goal change to adoption because Child is in the care of relatives. (**See** Mother's Brief, at 20). We disagree.

Child is currently in the care of her maternal Uncle and Aunt who desire to adopt her. We agree that Child is currently in the care of relatives who intend to continue to provide care for her even if adoption is not an option, but the circumstances of this case support a goal of adoption rather than a goal of placement in another planned living arrangement.

Child has specifically told Aunt and Uncle that she wants them to adopt her and her Law Guardian testified, "She was very clear with me she doesn't want to see [M]other anymore." (N.T., at 188). As stated above, Child's attitude and behavior have improved dramatically since moving in with Aunt and Uncle and she is doing extremely well overall in her current placement. Her therapist also noted that in the months just prior to the May 6, 2013, hearing, Child had become increasingly angry with Mother and had expressed a desire not to live with her. (**See id.** at 88-89). Instead, she

reacted positively to discussions regarding adoption and expressed her desire to remain with Aunt and Uncle. (**See id.**). When he was asked for his recommendation regarding Child's ongoing contact with Mother, Mr. Clearwater responded, "At this time I feel as though it would be beneficial for the parental rights of [Mother] to be terminated based on what I've seen in session." (**Id.** at 90). When questioned further, he added, "It is my opinion that at this time the visitation should cease and phone calls should be discontinued." (**Id.**).

Mother's inability to maintain a habitable home also argues for a change of goal to adoption. As we have seen above, there is little room for doubt that Mother, given her lengthy history of inability to maintain a clean, safe, and livable home, would not be capable of maintaining an appropriate home for Child. Aunt and Uncle, on the other hand, have provided a safe environment for Child and are an available and willing adoptive resource for her. Therefore, we conclude that the trial court did not abuse its discretion when it changed Child's goal to adoption rather than another planned living arrangement intended to be permanent. Mother's second issue is without merit.

In her third and final issue, Mother argues the trial court abused its discretion when it terminated her parental rights. (**See** Mother's Brief, at 21-23). The trial court terminated Mother's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(8), by which a petitioner must demonstrate, "(1) that 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.” **C.L.G., supra** at 1005 (citation omitted).

Child was placed in the care of LCCYS on January 16, 2012, nearly two years ago, and fifteen months prior to the filing of the petition for termination. The conditions which led to the placement of Child continue to exist in that Mother has not provided a safe home for Child since prior to the Agency’s involvement in July 2011, and she has been unable to improve her housing conditions, even with the assistance and encouragement of many service providers. The Law Guardian and Child’s therapist both testified that Child has expressed a strong desire not to see Mother and an equally strong desire to be adopted by Aunt and Uncle. (**See** N.T., at 88, 187-89). Child is flourishing in her current environment and has made significant improvement in her behaviors, emotions and education. (**See id.** at 30-32). Her needs and welfare will clearly be served by the termination of Mother’s parental rights and her adoption by Aunt and Uncle. The trial court did not abuse its discretion when it terminated Mother’s parental rights pursuant to subsection (a)(8).

As stated above, 23 Pa.C.S.A. § 2511(b) requires the trial court to assess the effects of termination on the developmental, physical and emotional needs and welfare of the child. **See** 23 Pa.C.S.A. § 2511(b). In

its opinion, the trial court cited the provisions of subsections (a)(8) and (b) and concluded:

The Child was removed from Mother's residence on January 16, 2012 due to unsafe housing conditions. These conditions failed to improve until February 18, 2013, when Mother moved into the Agape shelter. However, this [c]ourt does not believe the shelter to be an appropriate residence for the Child. This is a temporary situation and the Child is already placed in a long-term, permanent placement where she is doing well. Based on Mother's past actions, this [c]ourt does not find that Mother is capable of maintaining a safe household for the [C]hild. In consideration of all the testimony heard at the May 6, 2013 hearing, we find the [c]ourt did not err in terminating Mother's parental rights.

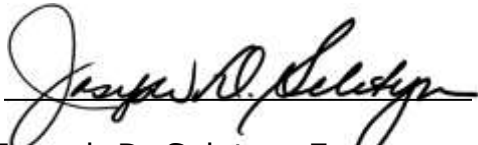
(Trial Ct. Op., at 13).

After review of the record, we agree that the record contains sufficient evidence to terminate Mother's parental rights pursuant to subsection (b). Specifically, Child's therapist, Mr. Clearwater, recommended the termination of Mother's parental rights and the discontinuance of all visitation and phone contact between Mother and Child. The Law Guardian related that Child has expressed the strong desire to be adopted by Aunt and Uncle, and Ms. Martin testified that Child's attitude and school performance have improved markedly since she started living with Aunt and Uncle. Finally, we have examined the record for any evidence of a bond between Mother and Child and have found no such evidence. "[I]n cases where there is no evidence of a bond between a parent and child, it is reasonable to infer that no bond exists." ***In re Adoption of J.M.***, 991 A.2d 321, 324 (Pa. Super. 2010) (citation omitted).

Accordingly, for the reasons stated, we affirm the trial court's orders terminating Mother's parental rights and changing Child's goal to adoption.

Orders affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/17/2013