

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: J.B., A MINOR,

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.B., MOTHER,

Appellant

No. 1117 EDA 2013

Appeal from the Order Entered March 25, 2013
In the Court of Common Pleas of Philadelphia County
Domestic Relations at No(s): CP-51-AP-0000142-2013

IN THE INTEREST OF: A.N., A MINOR,

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.B., MOTHER,

Appellant

No. 1120 EDA 2013

Appeal from the Order Entered March 25, 2013
In the Court of Common Pleas of Philadelphia County
Domestic Relations at No(s): CP-51-AP-0000141-2013

BEFORE: BOWES, DONOHUE, and OTT, JJ.

MEMORANDUM BY BOWES, J.:

FILED DECEMBER 10, 2013

In these consolidated appeals, J.B. ("Mother") appeals from the orders terminating her parental rights to her sons J.B. and A.N.¹ We affirm.

¹ The trial court also terminated the parental rights of J.B.'s and A.N.'s respective fathers, T.F. and R.W. Neither of the fathers appealed.

The Philadelphia Department of Human Services (“DHS”) became involved with the family during 2011 following a violent physical confrontation between Mother and A.N.’s birth father, R.W. A.N. was injured during the altercation, and neither parent could explain the cause of their son’s injuries. The subsequent Child Protective Services (“CPS”) report identified both Mother and R.W. as indicated perpetrators of abuse. The juvenile court adjudicated the children dependent on December 16, 2011, and placed them in foster care.² As of the date of the March 25, 2013 hearing to terminate Mother’s parental rights, J.B. and A.N. had resided together in their current pre-adoptive foster home in excess of one year. The children, then ages three and one-half and two and one-half, referred to their foster parents as “Mom” and “Dad.”

Mother has an admitted history of drug and alcohol abuse. In addition, she has mental health problems and noted concerns with physical aggression and anger management. In light of these issues, after removing J.B. and A.N. from Mother, DHS fashioned a Family Service Plan (“FSP”) that

² The juvenile court appointed Lisa Harding, Esquire, on December 7, 2011. Attorney Harding represented Mother during the shelter care hearing, adjudication of dependency, and all but one of the permanency review hearings prior to current counsel’s appointment. **See** DHS Exhibits 4 and 5. During the June 6, 2012 permanency review hearing, substitute counsel appeared on Attorney Harding’s behalf. DHS Exhibits 4 and 5. Thereafter, during the subsequent permanency review hearing on September 5, 2012, the juvenile court vacated Attorney Harding’s appointment and appointed current counsel to represent Mother. DHS Exhibit 5.

required her to attend supervised visitation, complete domestic violence and anger management programs, submit to evaluation by the Clinical Evaluation Unit ("CEU"), and comply with recommendation to participate in a mental health and substance abuse dual diagnosis program. Additionally, the FSP directed Mother to address parenting issues and obtain adequate housing. Mother's compliance with her FSP goals was inconsistent. While she initially attended visitation, her attendance became erratic after the visitation requirement was combined with the parenting component in a program designed to monitor and manage her interaction with her sons. Similarly, she failed to complete anger management or domestic violence counseling. In addition, Mother submitted positive urine drug screens and failed to participate in random drug screens. Finally, to the extent that Mother engaged in any treatment programs independently, she failed to provide DHS with current releases so that the agency could verify her participation.

On March 7, 2013, DHS filed petitions to terminate Mother's parental rights to J.B. and A.N. pursuant to 23 Pa.C.S. § 2511(a)(1), (2), (5), (8), and (b). Mother's counsel during the dependency matters continued his representation in the involuntary termination proceedings. The trial court held an evidentiary hearing on March 25, 2013. DHS presented the testimony of the caseworker assigned to the family, Keira Desiree Cole-Littlejohn, and the boys' foster care caseworker, Rosalind Turner. Mother testified and presented the testimony of Regina Holloway, a social worker

from the inpatient rehabilitation facility that Mother was attending when the hearing occurred. The trial court, thereafter, entered the above-referenced orders terminating Mother's parental rights to J.B. and A.N. pursuant to §2511(a)(1), (2), (5), (8), and (b). These timely appeals followed, which we *sua sponte* consolidated for argument. Mother complied with Pa.R.A.P. 1925(a)(2)(i) by filing identical statements of errors complained of on appeal which raised four issues. The trial court entered two opinions setting forth the merits of its decisions to terminate Mother's parental rights.³

Mother reiterates her claims on appeal as follows:

1. Was there improper failure to provide counsel by the court due to the fact that for several months after the [adjudication] and during the review hearing process Appellant . . . did not have an active attorney on the case?
2. Did the judge erred [sic] by improperly limited [sic] cross exam by not continuing the hearing to allow Appellant's [c]ounsel to receive the family service plan documents that he requested from the City Solicitor's Office [and] was told he would receive [but] never received them?
3. Was original counsel on the case ineffective . . . by not showing up to a review hearing when [s]he is counsel of record and required under law to show up and did not remove himself properly?
4. Did the Judge ruled [sic] in error that the Philadelphia City Solicitor's Office met its burden of proof?

Appellant's brief at 3.

³ The trial court opinions are identical except for the court's specific references to J.B. and A.N. and their respective dates of birth.

We recently outlined the pertinent scope and standard of review.

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. 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.

The burden is upon the petitioning person or agency to prove by clear and convincing evidence that its asserted grounds for seeking the termination of parental rights are valid. Moreover, we have explained:

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 hesitation, of the truth of the precise facts in issue.'

The trial court is free to make all credibility determinations, and may believe all, part, or none of the evidence presented. If the findings of the trial court are supported by competent evidence, we will affirm even if the record could also support the opposite result

In re T.M.T., 64 A.3d 1119, 1125 (Pa.Super. 2013) (citations omitted).

In re Adoption of R.K.Y., 72 A.3d 669, 673-674 (Pa.Super. 2013).

At the outset, we observe that Mother's first and third issues are waived because Mother did not raise those claims before the trial court. In her first issue, Mother complains that she was denied counsel during portions of the juvenile court proceedings and she argues that the lack of

representation in those proceedings contributed to her inability to satisfy her FSP goals. Concomitantly, in her third issue, Mother challenges Attorney Harding's stewardship based on the manner in which she withdrew from representation. Specifically, Mother asserts that counsel failed to attend a dependency hearing on September 5, 2012, and that, even though she was represented by substitute counsel on that occasion, "New counsel did not have time to prep for this hearing." Mother's brief at 9.

Pursuant to Pa.R.A.P. 302(a), "Issues not raised in the lower court are waived and cannot be raised for the first time on appeal." Herein, Mother never leveled an objection during the termination hearing regarding either the purported intermittent lack of representation throughout the dependency matters or counsel's alleged ineffectiveness. Indeed, Mother did not imply during the termination hearing through testimony, cross-examination, or argument, that she was denied counsel during the proceedings in juvenile court, challenge the propriety of those proceedings, or indicate how counsel's stewardship would affect the trial court's decision to terminate her parental rights. Accordingly, Mother's assertion that she was denied counsel during portions of the juvenile court proceedings and her allegations that Attorney Harding provided ineffective assistance are waived.

Moreover, as we explained in ***In re Adoption of B.R.S.***, 11 A.3d 541, 545 n.3 (Pa.Super. 2011), "Pursuant to the Juvenile Act, 42 Pa.C.S. § 6301, *et seq.*, permanency planning for dependent children is conducted under the

aegis of the juvenile court. Conversely, involuntary termination of parental rights is conducted under the jurisdiction of the orphans' court pursuant to the Adoption Act, 23 Pa.C.S. § 2101, *et seq.*"⁴ Herein, Mother contests only the respective decrees involuntarily terminating her parental rights to her two sons. She does not challenge the juvenile court's decision to change the children's permanency goals to adoption. Hence, the certified record is limited to the termination proceedings initiated under the Adoption Act and those portions of the juvenile court proceedings that DHS introduced as exhibits during the hearing. Thus, even if Mother had preserved these claims in the trial court, which she did not, no basis would exist to grant relief as to the termination rulings.⁵

⁴ Philadelphia County does not have an orphans' court. Pursuant to 20 Pa.C.S. § 713, "the jurisdiction over adoptions [in Philadelphia County] shall be exercised through the family court division of the court of common pleas."

⁵ Mother's contentions rest upon unsupported inferences, speculation and conjecture concerning Attorney Harding's representation. If we were constrained to review Mother's issues based on the limited juvenile court record, we would undoubtedly find that the certified record, though scant, belies Mother's assertions that Attorney Harding failed to attend the dependency proceedings, avoided her duty to zealously represent Mother, or withdrew her representation improperly. As noted in footnote two, the DHS exhibits demonstrate that Attorney Harding participated in the shelter care hearing, the boys' adjudication of dependency, and all but one of their permanency review hearings. In addition, Attorney Harding obtained substitute counsel to represent Mother during the one hearing that she missed before the court vacated her appointment and inserted current counsel on September 5, 2012. Accordingly, Mother's assertion that she was denied effective assistance is baseless.

Next, we address Mother's second issue, *i.e.*, that DHS failed to provide her counsel a copy of the FSP goals prior to the evidentiary hearing on the petition to terminate her parental rights. Unlike the foregoing issues, Mother preserved this claim by leveling an objection with the trial court and arguing that the omission would prejudice her ability to cross-examine DHS witnesses. Nevertheless, for the following reasons, no relief is due.

The following facts are relevant. During the evidentiary hearing, Mother's counsel objected to DHS's failure to provide him a courtesy copy of the FSP that DHS fashioned for Mother. N.T., 3/25/13, at 10-11. Counsel argued that he requested the document upon his appointment to the juvenile court proceedings in September of 2012 because he was not representing Mother when the FSP was implemented. *Id.* at 11. While counsel did not specifically request a continuance, he argued, "you are going to hear about the FSP plan and I would like to have that document before we go forward on any of this, because it impacts my client's . . . cross-examination . . ." *Id.* at 11-12. The trial court confirmed that DHS listed Mother's FSP goals in its petition to terminate her parental rights and that Mother received that petition. *Id.* at 12. Nevertheless, counsel continued to request the original document, "to make sure that [the statement of the goals] are correct and that they were agreed to[.]" *Id.* Thereafter, the trial court stated that it would preclude DHS from introducing the document as an exhibit, but permit the agency to introduce testimony regarding the FSP

objectives subject to Mother's cross-examination based upon the goals enumerated in the petition to terminate parental rights. The court included the final qualification, "Now, if something is different, you hear a different [goal], you can ask that [that testimony] be stricken based upon [the] failure to provide you the FSP objectives." *Id.* at 13. Mother accepted the trial court's ruling and the constraints that the court placed on its consideration of DHS's enumeration of the FSP goals. *Id.*

Thereafter, during DHS's case-in-chief, Mother declined to challenge Ms. Cole-Littlejohn's interpretation of the FSP goals or contest the accuracy of the FSP goals as they were listed in DHS's petition to terminate her parental rights. Specifically, she neither asserted that the witness's testimony outlining the FSP goals was incorrect nor requested that the trial court strike any portion of the testimony on that basis. *Id.* at 22-45. Moreover, counsel capably cross-examined Ms. Cole-Littlejohn about Mother's FSP goals without complaining of a putative impairment to cross-examination or reiterating his initial objection. *Id.* at 36-42. Thus, to the extent that Mother objected at the start of the case to DHS's failure to provide her counsel a copy of the FSP, she subsequently accepted the trial court's resolution of the objection and failed to level a fresh objection to the omission within the parameters of the trial court's decision. Stated simply, rather than make a specific request to continue the termination hearing, Mother agreed to the trial court's treatment of the evidence regarding her

FSP goals. The court's remedy rectified any prejudice that Mother might have suffered as a result of DHS's purported oversight in failing to provide her counsel a courtesy copy of the FSP goals.⁶ Accordingly, this claim fails.

On appeal, Mother additionally complains that the trial court considered aspects of the FSP in drafting its Rule 1925(a) opinion that exceeded the testimony introduced during the evidentiary hearing. Specifically, Mother contends that the trial court referred to family service plan meetings and listed the FSP goals in its rendition of the facts and mentioned permanency orders that noted Mother's inconsistent compliance with the FSP goals. Although Mother fails to identify and reproduce the offending language, it is obvious that her argument is based upon the following excerpts from the trial court's Rule 1925(a) opinion:

A Family Service Plan meeting was held by the Department of Human Services. The Family Service Plan objectives for mother and father were (1) to meet with counselor on a weekly basis to learn expected behavior for children (2) participate in evaluation for drug/alcohol abuse and (3) communicated [sic] and visit with the child.

⁶ While counsel repeatedly assailed DHS for failing to provide him a courtesy copy of the FSP, he failed to explain why he could not obtain the original FSP from Mother or Attorney Harding, nor did counsel assert that those individuals were denied the document when the plan was devised. **See** 55 Pa.Code § 3130.61 (e) ("The county agency shall provide family members [and] their legal counsel . . . with a copy of the service plan[.]"). Hence, the underlying premise upon which Mother's claim is predicated, *i.e.*, DHS failed in its duty to provide current counsel the requested document, is faulty.

The objectives specifically identified for mother were 1) participate in mental health treatment, 2) participate in drug and alcohol treatment, and 3) to attend parenting capacity evaluation and visitation.

. . . .

In subsequent hearings, the DRO's reflect the Court's review and disposition as a result of evidence presented addressing the lack of compliance with suitable housing, mental health treatment and drug and alcohol treatment.

Trial Court Opinion, 5/23/13, at unnumbered page 2. Mother contends that it was an abuse of discretion for the trial court to consider the forgoing aspects of the FSP in its opinion. For the following reasons, we disagree.

First, we observe that the trial court's references in its opinion to the FSP did not exceed the evidentiary limitations the court placed on the document. We stress that the trial court never indicated that it would ignore Mother's lack of compliance with the FSP goals in rendering its determination of whether to terminate her parental rights, and any suggestion that the court's evidentiary ruling was that expansive is untenable. In reality, the trial court merely prohibited DHS from introducing the document as physical evidence. The agency capably introduced the pertinent information regarding the FSP goals and Mother's marginal fulfillment of those objectives through its witness, Ms. Cole-Littlejohn. The trial court simply reiterated the information that was presented at trial. In particular, the court listed the FSP objectives and highlighted that Mother's compliance was lacking. Neither of these facts contravened the confines of the trial court's

evidentiary ruling that precluded the admission of the FSP document into the record as physical evidence. Mindful of the narrow scope of the court's evidentiary ruling and the fact that Mother not only declined to object to Ms. Cole-Littlejohn's testimony, but also subjected the witness to cross-examination regarding Mother's FSP compliance, we reject her current assertion that the trial court's references to the FSP goals were improper.

Second, other than a passing citation to the proper standard of review, Mother has failed to cite a single legal authority for the proposition that the trial court erred in referring to the FSP in its rendition of the facts or by discussing other documents that mentioned the FSP. It is axiomatic that where an appealing party fails to provide citation to pertinent authority and appropriate legal discussion to support an allegation, we consider it waived:

The Rules of Appellate Procedure state unequivocally that each question an appellant raises is to be supported by discussion and analysis of pertinent authority. **See** Pa.R.A.P. 2119(b); **Estate of Lakatosh**, 441 Pa.Super. 133, 656 A.2d 1378, 1381 (1995) (concluding that appellant had waived issue raised on appeal as corresponding argument in brief included only general statements without appropriate citation to authority). Without a reasoned discussion of the law against which to adjudge the [appellants'] claims, our ability to provide appellate review is hampered. "It is not this Court's function or duty to become an advocate for the appellant[]." **Commonwealth v. Birdseye**, 432 Pa.Super. 167, 637 A.2d 1036, 1043 (1994). Accordingly, we deem the [appellants'] assertion . . . waived. **See** Pa.R.A.P. 2119(b) (Citations to authorities); 2101 (Conformance with Requirements); **Estate of Lakatosh**, 656 A.2d at 1381; **Birdseye**, 637 A.2d at 1043.

Estate of Haiko v. McGinley, 799 A.2d 155, 161 (Pa.Super. 2002).

Hence, assuming, *arguendo*, that the trial court's references to the FSP in its

summation of the facts and procedural history of this case were not benign, Mother's allegation of trial court error is waived.

Finally, we address Mother's claim that the record does not support the trial court's finding that DHS established by clear and convincing evidence the statutory grounds to terminate her parental rights pursuant to 23 Pa.C.S. § 2511 (a) and (b). Pointing to her relatively recent success in completing the CEU evaluation and participating in inpatient drug treatment, Mother contends that she has either satisfied her FSP goals or will be able to achieve all but one of the goals in the inpatient facility. Thus, she contends, the trial court erred in concluding that DHS satisfied its burden of proof. Again, we disagree.

Grounds for termination of a biological parent's parental rights are governed by 23 Pa.C.S. § 2511, which provides in pertinent part as follows:

(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:

(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.

(2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

. . . .

(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.

. . . .

(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. § 2511.

The test for terminating parental rights consists of two parts. In ***In re L.M.***, 923 A.2d 505, 511 (Pa.Super. 2007), we explained:

Initially, the focus is on the conduct of the parent. The party seeking termination must prove by clear and convincing

evidence that the parent's conduct satisfies the statutory grounds for termination delineated in Section 2511(a). Only if the court determines that the parent's conduct warrants termination of his or her parental rights does the court engage in the second part of the analysis pursuant to Section 2511(b): determination of the needs and welfare of the child under the standard of best interests of the child. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child, with close attention paid to the effect on the child of permanently severing any such bond.

We need only agree with the trial court's decision as to one subsection of 23 Pa.C.S. § 2511(a) in order to affirm the termination of parental rights. ***In re B.L.W.***, 843 A.2d 380, 384 (Pa.Super. 2004) (*en banc*). Herein, we agree with the trial court's decision to terminate Mother's parental rights pursuant to subsections 2511(a)(1) and (b).

The pertinent inquiry for our review follows.

To satisfy Section 2511(a)(1), the moving party must produce clear and convincing evidence of conduct sustained for at least the six months prior to the filing of the termination petition, which reveals a settled intent to relinquish parental claim to a child or a refusal or failure to perform parental duties. . . . Section 2511 does not require that the parent demonstrate both a settled purpose of relinquishing parental claim to a child and refusal or failure to perform parental duties. Accordingly, parental rights may be terminated pursuant to Section 2511(a)(1) if the parent either demonstrates a settled purpose of relinquishing parental claim to a child or fails to perform parental duties.

In re D.J.S., 737 A.2d 283, 285 (Pa.Super. 1999) (quoting ***Matter of Adoption of Charles E.D.M., II***, 708 A.2d 88, 91 (Pa. 1998)) (internal citations omitted). Although it is the six months immediately preceding the filing of the petition that is the most critical to the analysis, the trial court

must consider the whole history of a given case and not mechanically apply the six-month statutory provision. ***In re B.,N.M.***, 856 A.2d 847 (Pa.Super. 2004).

Additionally, after it is established that a parent either demonstrated a settled purpose of relinquishing parental rights or failed to perform his or her parental duties, the trial court must address, "(1) the parent's explanation for his or her conduct; (2) the post-abandonment contact between parent and child; and (3) consideration of the effect of termination of parental rights on the child pursuant to Section 2511(b)." ***See Matter of Adoption of Charles E.D.M., II, supra*** at 92.

Herein, the trial court provided the following rationale for its decision to grant DHS's petition to involuntarily terminate Mother's parental rights.

It is clear from the record that for a period of six (6) months leading up to the filing of the Petition for Involuntary Termination, mother failed to perform any parental duties for [her sons]. The court found by clear and convincing evidence that [M]other failed to perform her parental duties. Testimony established that [M]other was inconsistent with her visits with [the boys]. (N.T. 3/25/13, pgs. 36, 47-48, 67)[.] Further testimony established Mother's frequent periods of incarceration prevented additional visits with the [children]. (N.T. 2/25/13 pgs. 36, 47-48, 66-67)[.] Testimony established Mother failed to meet or inquire about the needs of [the children] over the last six months. (N.T. 3/25/2013, pgs. 33-34)[.]

A parent has an affirmative obligation to act in his child's best interest. As stated in ***Adoption of Hamilton***, 379 Pa. Super at 274, 59 A.2d at 1291, "to be legally significant, the contact must be steady and consistent over a period of time, contribute to the psychological health of the child, and must demonstrate a serious intent on the part of the parent to recultivate a parent-

child, and must demonstrate a willingness and capacity to under take the parental role.[”] ***In re E.S.M.***, 424 Pa. Super at 296[.]

In the instant matter, [J.B. and A.N. have] been in care for over fifteen months. (N.T. 3/25/13, pg. 25)[.] The testimony established the [children are] in a stable environment and adoption was in the[ir] best interest. . . . (N.T. 2/25/13 pgs. 33, 48-49)[.] Mother failed to visit and communicate with [her sons].

Trial Court Opinion, 5/23/13, at unnumbered page at 3.

The certified record sustains the trial court’s determination. During the evidentiary hearing, Ms. Cole-Littlejohn testified about her involvement with the family. She stated that she was assigned the family during January of 2012 and maintained the file since that time. N.T., 3/25/13, at 18. She reiterated that DHS became involved with the family following a violent domestic altercation between Mother and A.N.’s father that resulted in A.N. suffering unexplained physical injuries. ***Id.*** at 19-20. She continued that the ensuing CPS report identified Mother and R.W. as indicated perpetrators of abuse. ***Id.*** at 20.

Ms. Cole-Littlejohn next outlined Mother’s several FSP goals and acknowledged her noncompliance. Specifically, she testified that Mother failed to complete drug and alcohol treatment. ***Id.*** at 24. Moreover, she missed court-ordered random drug screens, and the results of the only two urine screens that she provided were positive. ***Id.*** at 25. Specifically, Mother tested positive for marijuana and benzodiazepines on January 1, 2013, and marijuana on January 31, 2013. ***Id.*** at 23. Ms. Cole-Littlejohn

further explained that the missed drug screens prevented CEU from identifying an appropriate treatment program. **Id.** at 35. She stated, "I don't think she has ever been ID'd a program since we have been working with the case." **Id.** at 35-36. During cross-examination, Ms. Cole-Littlejohn disputed that Mother's purported problems maintaining telephone service caused her to miss the drug screens. **Id.** at 39-40.

Likewise, Ms. Cole-Littlejohn testified that Mother was not consistent with her mental health treatment. **Id.** at 25-26. While Ms. Cole-Littlejohn acknowledged that Mother recently admitted herself into an inpatient dual diagnosis treatment facility on March 8, 2013, approximately two weeks prior to the evidentiary hearing, she stressed that Mother had done nothing to address her mental health or substance abuse issues during the preceding sixteen-month period. **Id.** at 44-45. Moreover, since Mother failed to execute a current release to DHS, the agency was unable to verify Mother's most recent self-reported efforts with mental health and drug treatment. **Id.** at 23-24, 45.

Mother's progress with her remaining goals also was minimal. She failed to complete anger management, domestic violence counseling, or parenting classes. **Id.** at 26. Ms. Cole-Littlejohn testified that DHS enrolled Mother in family school on three separate occasions, but Mother was ultimately discharged without completing that program. **Id.** at 27-28, 35. The agency pursued family school so that it could monitor and manage

Mother's interactions with J.B. and A.N. **Id.** at 27. Additionally, Mother failed to consistently attend the Achieving Reunification Center ("ARC") even though she also re-engaged the program on approximately three occasions.⁷ **Id.** at 26, 35. As it relates to the housing component, Ms. Cole-Littlejohn testified that Mother was discharged from the housing program for noncompliance and never obtained housing that was appropriate for the children. **Id.** at 29.

In relation to visitation, Ms. Cole-Littlejohn expressed that, while Mother attended supervised visitations consistently for the first several months of DHS's involvement with the family, her consistency thereafter declined precipitously. **Id.** at 28. She explained that Mother attended weekly visitation on only four occasions in the four months preceding the termination hearing, including two visitations since the December 2012 permanency review hearing. **Id.** at 29; DHS Exhibits 4 and 5.

J.B. and A.N.'s current foster care caseworker, Ms. Turner, testified consistently that, since she was assigned the case during mid-January of 2013, Mother attended supervised visitations on only two occasions. **Id.** at 47. Ms. Turner stated that Mother's attendance was steady between January of 2012 and May of 2012; however, it declined after the agency combined the visitations with family school. **Id.** at 47-48. Mother failed to

⁷ ARC is a DHS program designed to help parents reunify with their children who are in out-of-home placement. **See** <http://www.arcenter.org/>

attend visitations in July and August of 2012. **Id.** at 48. She attended one or two visitations in September and October of 2012. **Id.** Additionally, although she attended visitation with her sons around Thanksgiving, she failed to attend during December of 2012. **Id.** Thereafter, she attended one visitation each during January and February of 2013. **Id.**

Ms. Turner acknowledged that Mother was incarcerated briefly on separate occasions during August and November of 2012 and that those situations affected her visitation. **Id.** However, noting Mother's objection to the family school component and the fact that Mother would often simply fail to appear at the scheduled visitations without notice regardless of location, Ms. Turner discounted Mother's additional justification for failing to attend due to employment. **Id.**

Indeed, the crux of Mother's response to DHS's allegations of her parental shortcomings is that her employment interfered with her ability to complete the FSP goals, particularly visitation. **Id.** at 60-61. She also blamed her incarcerations during August and November of 2013 for her noncompliance with the FSP. **Id.** at 61. Ironically, however, on cross examination, she conceded that her brief incarcerations, in fact, stemmed from two of the precise issues that the FSP was designed to address, *i.e.*, domestic violence and employment. **Id.** at 62. Thus, Mother's proposed justification for failing to comply with the FSP is unpersuasive.

In addition, Mother testified during the evidentiary hearing that she recently admitted herself into a mental health facility and was subsequently referred to a drug rehabilitation center. *Id.* at 61. Mother opined that she is able to complete all of her remaining FSP objectives during her treatment, and presented evidence from the facility's social worker, Regina Holloway, to support her position. *Id.* at 61. Briefly, Ms. Holloway testified that Mother is currently subject to twenty-four-hour supervision, and participates in group and individual therapies to address her substance abuse and mental health issues, and parenting courses. *Id.* at 63-64. She further elucidated that Mother's therapeutic sessions would address her anger issues, and stated that Mother would be able to reinstitute visitation with her sons within a week from the hearing. *Id.* at 64.

Notwithstanding Mother's desperate attempts to address her parental incapacity, the foregoing evidence of inaction sustains the trial court's decision to terminate parental rights pursuant to § 2511(a)(1). Mother failed to perform her parental duties for a period exceeding six months and her explanation for her non-performance, the limitations of employment and her brief incarcerations, do not excuse her inaction. Mother not only squandered DHS's efforts, referrals, and resources over that period and flouted the court-ordered drug screens, she also failed to comply with the most basic aspect of the agency's involvement with the family: visitation with J.B. and A.N. Indeed, as illustrated by Mother's continued failure to

attend visitations consistently, Mother's contact with her children was practically nonexistent. Tellingly, her justification for failing to visit the children during family school was that she did not want to attend family school because she did not believe that it was helping her. **Id** at 27. Hence, as typical of her behaviors, Mother's desire to avoid the program took precedence over the benefit that her participation would have provided her sons.

Finally, although Mother's current progress with her inpatient therapy is commendable, the belated efforts are insufficient to preserve her parental rights. Section 2511(b) instructs, "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. § 2511(b). Herein, DHS filed the petitions to terminate Mother's parental rights to J.B. and A.N. on March 7, 2013, and Mother registered for drug treatment on the following day. **See** N.T., 3/25/13, at 44. Thus, on its face, Mother's reliance upon her last-minute endeavors is inadequate. Moreover, even to the extent that Mother initiated the services that lead to her admission into inpatient care prior to March 7, 2012, the trial court considered Mother's achievements and weighed them accordingly. **Id.** at 41. The court essentially made a credibility determination against Mother

and in favor of DHS's witness regarding Mother's failure to complete the FSP objectives. **Id.** at 69-70; Trial Court Opinion, 5/23/13, at 4.

As the record supports the trial court's conclusions that DHS adduced clear and convincing evidence of Mother's failure to perform her parental duties to J.B. and A.N, we will not disturb it. In sum, for approximately sixteen months, Mother refused to cooperate with DHS in achieving sobriety or addressing her behavioral and mental health issues, and she failed to document that she attained any of her FSP goals, including maintaining contact with her sons.

Having found that competent evidence supports the trial court's determination pursuant to § 2511(a), we next address the trial court's bond effect-analysis under § 2511(b). We have emphasized that while a parent's emotional bond with his or her child is a major aspect of the subsection 2511(b) best-interest analysis, it is nonetheless only one of many factors to be considered by the trial court when determining what is in the best interest of the child. **In re K.K.R.-S.**, 958 A.2d 529, 533-536 (Pa.Super. 2008). The mere existence of an emotional bond does not preclude the termination of parental rights. **See In re T.D.**, 949 A.2d 910 (Pa.Super. 2008) (trial court's decision to terminate parents' parental rights was affirmed where court balanced strong emotional bond against parents' inability to serve needs of child). Rather, the trial court must examine the status of the bond to determine whether its termination "would destroy an

existing, necessary and beneficial relationship.” ***In re Adoption of T.B.B.***, 835 A.2d 387, 397 (Pa.Super. 2003). Moreover, as we explained in ***In re K.Z.S.***, 946 A.2d 753, 763 (emphasis omitted),

In addition to a bond examination, the court may equally emphasize the safety needs of the child under subsection (b), particularly in cases involving physical or sexual abuse, severe child neglect or abandonment, or children with special needs. The trial court should also examine the intangibles such as the love, comfort, security and stability the child might have with the foster parent. Another consideration is the importance of continuity of relationships to the child and whether the parent child bond, if it exists, can be severed without detrimental effects on the child. All of these factors can contribute to the inquiry about the needs and welfare of the child.

See also In re A.S., 11 A.3d 473, 483 (Pa.Super. 2010) (orphans’ court can emphasize safety needs, consider intangibles, such as love, comfort, security, and stability child might have with the foster parent, and importance of continuity of existing relationships).

Instantly, Mother contends that J.B. and A.N. refer to her as their mother and that she shares a parental bond with the children. Mother’s brief at 10-11. She continues that “Since a bond still existed between parent and child a termination would have severe consequences on the child[ren].” ***Id.*** at 11. Hence, Mother posits, “[w]ith this testimony [, it] is not clear and convincing that it would be in the children’s best interest to terminate since there was a mother bond [sic] relationship.” ***Id.*** For the following reasons, we reject Mother’s contention that a beneficial parent-

child bond exists between her and her sons that would be detrimental to sever.

The trial court proffered the following needs-and-welfare analysis pursuant to subsection 2511(b).

In the instant matter, the testimony established that . . . the children would not suffer any irreparable emotional harm if [M]other's parental rights are terminated. (N.T. 3/25/13, pgs. 33-34) [The children] [do] not have a bond with [M]other due to her lack of consistent visitation. (N.T. 2/25/13, pgs. 36, 49-50) [The boys] . . . bonded with [their] foster parents and [look] to them for [their] basic needs, medical and emotionally. (N.T. 3/25/13, pgs. 33-34, 49-50) Testimony described the relationship between [the children] and [their] foster parent[s] as strong and loving (N.T. 3/25/13, pg. 49, 65).

Trial Court Opinion, 5/23/13, at unnumbered page 4. Hence, in utter contrast to Mother's assertions regarding the presence of a parental bond, the trial court found that no bond existed between Mother and either of her sons. Our review of the certified record and the evidence adduced during the March 25, 2013 hearing sustains the trial court's conclusion. Accordingly, no relief is due.

Ms. Cole-Littlejohn testified that J.B. and A.N. have been together in their pre-adoptive foster home since January of 2012, and that terminating Mother's parental rights is in the boys' best interest and would not cause them irreparable harm. N.T., 3/25/13, at 32-34. Mother does not have preeminence in her sons' lives. In fact, for the past six months, Mother failed to inquire about the children's needs, much less make any effort to address them. *Id.* at 33. However, in stark contrast to Mother's apathy,

the foster parents have consistently provided J.B. and A.N. parental care. Indeed, the children rely upon their foster parents, who they identify as “Mom and Dad,” to satisfy their basic needs and well-being, including their medical and emotional needs. **Id.** at 33-34.

Similarly, the foster care caseworker, Ms. Turner, characterized J.B. and A.N.’s relationship with their foster parents as very good, reiterated that the children refer to them as “Mom and Dad,” and demonstrated how J.B. and A.N. not only rely upon the foster parents for their most basic physical needs, such as food and clothing, but also depend on them for emotional support. **Id.** at 48-49. Specifically, she described an incident during a visit to the foster home wherein one of the children fell and immediately ran to the foster mother for comfort. **Id.** at 49. In addition, Ms. Turner testified that the children are safe in foster care. **Id.** at 51. Indeed, she observed that although there have been two instances where she and DHS both investigated minor physical injuries to the children (bruising and a nose bleed), Mother remained adamant during the investigation that she trusted the foster family and noted her desire that her sons remain in the foster home. **Id.** at 52.

As with Ms. Cole-Littlejohn, Ms. Turner also opined that it would serve J.B. and A.N.’s best interests to terminate Mother’s parental rights and that terminating parental rights would not cause irreparable harm. **Id.** at 50. She continued, “when Mom was inconsistent with her visits, [the boys] never

asked about her, they never asked—I would call and ask foster parents, how are the kids doing[?] [D]o they ask about their Mom[?] [They said,] never.” **Id.** Thus, in light of Mss. Cole-Littlejohn’s and Turner’s testimony regarding the lack of parental bond, the certified record belies Mother’s assertion that she shares a meaningful bond with her sons that would be detrimental to sever.

Mindful that the needs and welfare analysis is reviewed on a case-by-case basis, and with consideration of both the nature and extent of the children’s relationships with Mother, the intangible factors that we outlined in ***In re K.Z.S., supra*** and ***In re A.S., supra***, such as the love, comfort, security, and stability the children enjoy with their foster family, and the importance of continuing those beneficial relationships upon their emotional and developmental well-being, we find sufficient evidence in the certified record to sustain the trial court’s determination that a meaningful parent-child bond does not exist. To the extent a meager bond exists between Mother and her sons, the certified record demonstrates that terminating Mother’s parental rights is not detrimental. In reality, it best serves J.B.’s and A.N.’s developmental, physical, and emotional needs and welfare.

Accordingly, for all of the foregoing reasons, we affirm the orders terminating Mother’s parental rights to J.B. and A.N. pursuant to 23 Pa.C.S. § 2511(a) and (b).

Orders affirmed.

J-A26014-13

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: 12/10/2013