

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: ADOPTION OF L.N.B.,

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: S.L.B., MOTHER,

No. 164 WDA 2013

Appeal from the Order December 20, 2012  
In the Court of Common Pleas of Westmoreland County  
Orphans' Court at No(s): 101 of 2012

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In the Court of Common Pleas of Westmoreland County  
Orphans' Court at No(s): 100 of 2012

BEFORE: STEVENS, P.J., BOWES, J., and MUSMANN, J.

MEMORANDUM BY STEVENS, P.J.

FILED: June 5, 2013

S.L.B. ("Mother") appeals from the orders dated and entered on December 20, 2012, granting the petitions filed by the Westmoreland County Children's Bureau ("WCCB") to involuntarily terminate her parental rights to her female children, L.N.B. and S.N.B. (collectively "Children"),

pursuant to section 2511(a)(2), (5), (8), and (b) of the Adoption Act, 23 Pa.C.S.A. § 2511(a)(2), (5), (8), and (b).<sup>1</sup> We affirm, and grant the motion filed by Mother's counsel seeking to withdraw as counsel.

The trial court set forth the factual background and procedural history of this appeal as follows.

S.N.B. was born [in March of 2008]. L.N.B. was born [in October of 2009]. Both children have been in placement since July 8, 2011. The minor children have been in their current foster home since August 2012. Since Westmoreland County Children's Bureau took custody of the minor children, S.N.B. experienced at least seven placements and L.N.B. has experienced at least five placements.

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The Westmoreland County Children's Bureau, hereinafter referred to as "the agency," filed for dependency of S.N.B. and L.N.B., and an Adjudication/Disposition hearing was held on July 8, 2011 before Court Master Annaliese P. Masser. At that time, the minor children were adjudicated dependent and retained in agency custody. Master Masser's findings and recommendations were approved pursuant to Orders of Court of the Honorable Chris Scherer on July 20, 2011.

The Initial Permanency Review Hearing was held on January 12, 2012[,] and the [trial court] found that Mother was minimally compliant with the agency's recommendations and made no progress toward alleviating the circumstances which led to placement. The second Permanency Review Hearing was held on July 9, 2012, with Mother failing to comply with the Permanency Plan and making no progress toward alleviating the circumstances which led to placement. Based on her lack of

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<sup>1</sup> On December 20, 2012, the trial court also terminated the parental rights of J.R.S., the father of the Children, pursuant to section 2511(a)(1), (2), and (5), and (b). Father has not filed appeals, nor is he a party to these appeals filed by Mother. **See** Trial Court Opinion, 2/4/13, at 1, n.1.

compliance, the agency then filed Petitions for Involuntary Termination of Parental Rights and Preliminary Orders relative to both minor children and the Natural Mother and Natural Father. Said Orders were scheduled [for] an evidentiary hearing before [the trial court] on December 20, 2012. The hearing was held as scheduled.

Trial Court Opinion, 2/4/12, at 1-2.

Father did not appear at the hearing on the termination petition on December 20, 2012, and the trial court permitted Father's counsel to withdraw his appearance on behalf of Father. N.T., 12/20/12, at 6.

At the hearing, WCCB first presented the testimony of Rhonda Miller, the Court-Appointed Special Advocate ("CASA") assigned to the case since September of 2011. *Id.* at 10.

WCCB also presented the testimony of Thomas Hempel, an in-home specialist with Family Resources, providing services to the family to facilitate reunification. *Id.* at 70. Mr. Hempel was involved in observing Mother's interactions with S.N.B. when she was placed with her grandparents. *Id.* at 71. Mr. Hempel also supervised the visits between Children and Mother, beginning in July of 2011, after Children were adjudicated dependent.

Next, WCCB presented the testimony of Thomas J. Maroon, M.D., a Board-certified pediatrician, who testified as an expert witness. *Id.* at 103-105. S.L.B. presented to Dr. Maroon with her foster mother on November 27, 2012, because of oppositional behaviors that Child was exhibiting. *Id.* at 107-110. In a letter dated November 27, 2012, Dr. Maroon gave his expert opinion that Child should not visit with Mother because the behavioral

problems were precipitated by her visitation. **Id.** at 112, 116-117; WCCB Exhibit 2. The trial court judge overruled the objection of Mother's counsel to the admission of the testimony and exhibit, but preserved counsel's objection as to the weight of the evidence argument with regard to Dr. Maroon's recommendation in the termination case. **Id.** at 117.

WCCB then called Lisa Shaffer, Mother's probation/parole officer since March of 2012, as its witness regarding Mother's criminal history, and her history of incarcerations, probation, parole, and parole violations and revocations. **Id.** at 121. WCCB next presented the testimony of its caseworker, Jessica Crowe, who was assigned to the family since April 13, 2010. **Id.** at 132. Next, WCCB presented the testimony of R.S., Children's foster mother since August of 2012, and who is a pre-adoptive resource for Children. **Id.** at 177. WCCB's final witness was Tara Lorenzo, a WCCB caseworker assigned to the case on November 20, 2012. *Id.* at 190. Finally, Mother testified on her own behalf.

On December 20, 2012, the trial court entered its orders terminating Mother's parental rights with regard to each of the children under section 2511(a)(2), (5), (8), and (b). On January 18, 2013, Mother timely filed her notices of appeal, along with Concise Statements of Errors Complained of on Appeal. On February 6, 2013, this Court, acting *sua sponte*, consolidated Mother's appeals.

On appeal, Mother raises the following issue:

1. Did the trial court abuse its discretion because the weight of the evidence presented did not warrant an order to terminate Mother's parental rights?

Mother's Brief, at 5.

On March 12, 2013, Mother's counsel filed a motion to withdraw as counsel and an **Anders**<sup>2</sup> brief. We begin by addressing the motion to withdraw before reaching the merits of the issues raised in the **Anders** brief. **See Commonwealth v. Rojas**, 874 A.2d 638, 639 (Pa. Super. 2005) (quoting **Commonwealth v. Smith**, 700 A.2d 1301, 1303 (Pa. Super. 1997)) (stating, "[w]hen faced with a purported **Anders** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw").

In **In re V.E.**, 611 A.2d 1267, 1275 (Pa. Super. 1992), this Court extended the **Anders** principles to appeals involving the termination of parental rights. We stated that counsel appointed to represent an indigent parent on a first appeal from a decree involuntarily terminating parental rights may, after a conscientious and thorough review of the record, petition this Court for leave to withdraw representation and must submit an **Anders** brief. **Id.** at 1275. To withdraw pursuant to **Anders**, counsel must: 1) petition the Court for leave to withdraw, certifying that after a thorough review of the record, counsel has concluded the issues to be raised are

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<sup>2</sup> **See Anders v. California**, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

wholly frivolous; 2) file a brief referring to anything in the record that might arguably support the appeal; and 3) furnish a copy of the brief to the appellant and advise him of his right to obtain new counsel or file a *pro se* brief to raise any additional points that the appellant deems worthy of review. ***In re V.E.***, 611 A.2d at 1273. Thereafter, this Court examines the record and determines whether the appeal is wholly frivolous. ***Id.***

Our Supreme Court, in ***Commonwealth v. Santiago***, 602 Pa. 159, 978 A.2d 349 (2009), stated that an ***Anders*** brief must:

- (1) provide a summary of the procedural history and facts, with citations to the record;
- (2) refer to anything in the record that counsel believes arguably supports the appeal;
- (3) set forth counsel's conclusion that the appeal is frivolous; and
- (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

***Santiago***, 602 Pa. at 178-179, 978 A.2d at 361.

The ***Santiago*** Court reaffirmed the principle that indigents "generally have a right to counsel on a first appeal, [but] . . . this right does not include the right to bring a frivolous appeal and, concomitantly, does not include the right to counsel for bringing such an appeal." ***Santiago***, 602 Pa. at 173, 978 A.2d at 357 (citation omitted). Our Supreme Court stated:

In the Court's view, this distinction gave meaning to the Court's long-standing emphasis on an indigent appellant's right to

“advocacy.” . . . As the Court put it, “[a]lthough an indigent whose appeal is frivolous has no right to have an advocate make his case to the appellate court, such an indigent does, in all cases, have the right to have an attorney, zealous for the indigent’s interests, evaluate his case and attempt to discern nonfrivolous arguments.”

**Santiago**, 602 Pa. at 173, 978 A.2d at 357-358 (citation and quotation omitted).

Mother’s counsel has complied with the first prong of the test in **Santiago** by providing a summary of the procedural history and facts, with citations to the record in his **Anders** brief. Counsel has also complied with the second prong of the test in **Santiago** by referring to anything in the record that counsel believes arguably supports the appeal. Moreover, counsel filed a separate motion to withdraw as counsel, wherein counsel states that he has made an exhaustive review of the record and applicable law, and he has concluded that the appeal is frivolous. Further, counsel has attempted to identify and fully develop any issues in support of Mother’s appeal. Additionally, counsel states that he sent a letter to Mother in which he provided a copy of the **Anders** brief. Counsel states that he informed Mother that he has filed a motion to withdraw and **Anders** brief, and he informed Mother of her rights in light of his motion. Thus, Mother’s appellate counsel has satisfied the requirements of **Santiago**. In the **Anders** brief, Mother’s counsel also states that the issues in Mother’s appeal lack merit.

We review the appeal in accordance with the following standard.

[A]ppellate courts must apply an abuse of discretion standard when considering a trial court's determination of a petition for termination of parental rights. As in dependency cases, our standard of review requires an appellate court to accept the findings of fact and credibility determinations of the trial court if they are supported by the record. ***In re: R.J.T.***, 608 Pa. 9, 9 A.3d 1179, 1190 (Pa. 2010). If the factual findings are supported, appellate courts review to determine if the trial court made an error of law or abused its discretion. ***Id.***; ***R.I.S.***, [\_\_\_ Pa. \_\_\_, \_\_\_, 36 A.3d 567, 572 (Pa. 2011) (plurality opinion)]. As has been often stated, an abuse of discretion does not result merely because the reviewing court might have reached a different conclusion. ***Id.***; ***see also Samuel Bassett v. Kia Motors America, Inc.***, [613 Pa. 371, 455], 34 A.3d 1, 51 (Pa. 2011); ***Christianson v. Ely***, [575 Pa. 647, 654-655], 838 A.2d 630, 634 (Pa. 2003). Instead, a decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will. ***Id.***

As we discussed in ***R.J.T.***, there are clear reasons for applying an abuse of discretion standard of review in these cases. We observed that, unlike trial courts, appellate courts are not equipped to make the fact-specific determinations on a cold record, where the trial judges are observing the parties during the relevant hearing and often presiding over numerous other hearings regarding the child and parents. ***R.J.T.***, [608 Pa. at 28-30], 9 A.3d at 1190. Therefore, even where the facts could support an opposite result, as is often the case in dependency and termination cases, an appellate court must resist the urge to second guess the trial court and impose its own credibility determinations and judgment; instead we must defer to the trial judges so long as the factual findings are supported by the record and the court's legal conclusions are not the result of an error of law or an abuse of discretion. ***In re Adoption of Atencio***, [539 Pa. 161, 165,] 650 A.2d 1064, 1066 (Pa. 1994).

***In re Adoption of S.P.***, \_\_\_ Pa. \_\_\_, \_\_\_, 47 A.3d 817, 826-827 (2012).

The burden is upon the petitioner to prove by clear and convincing evidence that the asserted grounds for seeking the termination of parental rights are valid. ***In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009).



Moreover, we have explained that:

[t]he 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.”

**Id.** (quoting **In re J.L.C.**, 837 A.2d 1247, 1251 (Pa. Super. 2003)).

This Court may affirm the trial court’s decision regarding the termination of parental rights with regard to any one subsection of section 2511(a). **See In re B.L.W.**, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*). We will focus on section 2511(a)(2), (5), (8), and (b), which provide, in relevant part, 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:

\* \* \*

(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.A. § 2511.

The Supreme Court set forth our inquiry under section 2511(a)(2) as follows.

As stated above, § 2511(a)(2) provides statutory grounds for termination of parental rights where it is demonstrated by clear and convincing evidence that "[t]he 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." . . .

This Court has addressed incapacity sufficient for termination under § 2511(a)(2):

A decision to terminate parental rights, never to be made lightly or without a sense of compassion for the parent,

can seldom be more difficult than when termination is based upon parental incapacity. The legislature, however, in enacting the 1970 Adoption Act, concluded that a parent who is incapable of performing parental duties is just as parentally unfit as one who refuses to perform the duties.

***In re Adoption of J.J.***, [511 Pa. 599, 605,] 515 A.2d 883, 891 (Pa. 1986) (*quoting In re: William L.*, [477 Pa. 322, 345,] 383 A.2d 1228, 1239 (Pa. 1978)).

***In re Adoption of S.P.***, \_\_\_ Pa. \_\_\_, \_\_\_, 47 A.3d 827.

This Court has long recognized that a parent is required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities. ***In re A.L.D.*** 797 A.2d 326, 337 (Pa. Super. 2002). A parent's vow to cooperate, after a long period of uncooperativeness regarding the necessity or availability of services, may properly be rejected as untimely or disingenuous. ***Id.*** at 340.

To satisfy the requirements of Section 2511(a)(5), the moving party must produce clear and convincing evidence regarding the following elements: (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 time; (4) the services reasonably available to the parents are unlikely to remedy the conditions which led to 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. ***See In re Adoption of M.E.P.***, 825 A.2d 1266, 1273-74 (Pa. Super. 2003).

When addressing section 2511(a)(8), we apply the following standard:

To terminate parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(8), the following factors must be demonstrated: (1) the child has been removed from parental care for 12 months or more from the date of removal; (2) the conditions which led to the removal or placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child. Section (a)(8) sets a 12-month time frame for a parent to remedy the conditions that led to the children's removal by the court. Once the 12-month period has been established, the court must next determine whether the conditions that led to the child's removal continue to exist, despite the reasonable good faith efforts of [the agency] supplied over a realistic time period. Termination under Section 2511(a)(8) does not require the court to evaluate a parent's current willingness or ability to remedy the conditions that initially caused placement or the availability or efficacy of [agency] services.

***In re K.Z.S.***, 946 A.2d 753, 759 (Pa. Super. 2008) (citation omitted).

The trial court provided the following reasoning in support of its decision to terminate Mother's parental rights with regard to section 2511(a)(2), (5), and (8), combining its analysis of the three subsections into one discussion:

In regards to 23 Pa.C.S.A. § 2511(a)(5) and 23 Pa.C.S.A. § 2511(a)(8), the requisite time periods have been satisfied. The minor children were adjudicated dependent on July 8, 2011. They have remained in the custody of the agency since that time, which exceeds both the 6 month period outlined in 23 Pa.C.S.A. § 2511(a)(5) and the twelve month period outlined in 23 Pa.C.S.A. § 2511(a)(8).

The initial Order of Adjudication was based on the fact that the minor children were without proper parental care or control due

to Mother's drug use. Mother testified that her drug addiction has existed since the age of 23. (N.T. 12/20/[20]12, pg. 224 lines 12-15). She is currently 29 years old. In addition to Mother's drug addiction, Mother testified that she has been diagnosed with bipolar disorder, OCD [("Obsessive Compulsive Disorder")], and depression. (N.T. 12/20/[20]12, pg. 208 lines 9-10). Mother does not own or rent her home, and she is currently staying with a new boyfriend. She is not employed. Since July 20, 2011, Mother has been ordered to successfully complete drug and alcohol treatment, submit to random drug screens, obtain mental health treatment, obtain stable and appropriate housing, obtain and maintain a verifiable source of income, and to complete instruction on parenting, home maintenance and budgeting. The record clearly reflects that, as of the evidentiary hearing on December 20, 2012, Mother has failed to complete any of these ordered services.

The July 8, 2011 adjudication was not the first time that the agency was involved with Mother based on her drug use. The minor child, S.N.B., was adjudicated dependent February 26, 2010 after a hearing in front of Court Master Annaliese Masser, and she remained in the agency's custody until September 21, 2010. At that time, Mother entered an inpatient drug program, and after one unsuccessful discharge, she was successfully discharged in June 2011. According to Jessica Crowe, the agency caseworker assigned to the case, Mother then relapsed and violated numerous safety plans that were put in place in an attempt to keep the minor children in the home. (N.T. 12/20/[20]12, pg. 135 lines 18-22). This resulted in the second adjudication of S.N.B., along with the adjudication of her sister L.N.B., on July 8, 2011.

In January 2012, Mother entered an inpatient drug treatment program at Brandywine. She was discharged successfully in February 2012 but she was supposed to complete follow up treatment through SPS [("Southwestern Pennsylvania Human Services, Inc.")]. She failed to do so. According to Thomas Hempel, In-[H]ome Specialist with Family Resources and supervisor of Mother's visits with the minor children, he could never persuade Mother to do any after care following her initial drug rehabilitation. (N.T. 12/20/[20]12, pg. 79 lines 21-23). In addition, Mother was not compliant with random drug testing to the point where testing was discontinued due to non-compliance. (N.T. 12/20/201[2] pg. 81 lines 12-22).

On December 5, 2012, Mother tested positive for cocaine and opiates. She then tested positive on December 6, 2012 for the same two drugs and marijuana. Even with the evidentiary hearing pending, Mother testified that she used cocaine and opiates one week prior to the hearing. (N.T. 12/20/[20]12, pg. 219, lines 17-18). Mother also testified that she wants to cure her addiction to drugs. Despite this intent, she has consistently failed to comply with follow up care. She was given information regarding a drug clinic from the CASA assigned to the case. (N.T. 12/20/2012, pg. 37 lines 12-16). The assigned agency caseworker offered to refer Mother to Drug Court, a program run by the Honorable Judge Christopher Feliciani that is free to the participant, but Mother refused to participate. (N.T. 12/20/[20]12, pg. 155 lines 1-4). Mother's parole officer, Lisa Shaffer, was even willing to assist Mother in finding a clinic or inpatient program at the weekly meeting following the December 6, 2012 positive drug test, but Mother never showed up to receive that assistance. (N.T. 12/20/2012, pg. 127, lines 16-24). When asked why she did not show up, the only explanation given by Mother was that she was scared. (N.T. 12/20/[20]12, pg. 218 lines 13-16). Since July 2011, she has been offered numerous opportunities at drug and alcohol treatment, even opportunities that were free of charge. Despite her alleged intent and the opportunities outlines above, Mother is currently not participating in a drug and alcohol treatment.

The record clearly reflects that Mother's drug problems existed at the time of adjudication, and even prior to said time based on the February 2010. With Mother's continued failure to follow recommendations and utilize opportunities and information provided to her regarding treatment, and with her two positive tests in December 2012 immediately prior to the evidentiary hearing, the drug conditions which led to removal of her children still exist pursuant to 23 Pa.C.S.A. § 2511(a)(2), (a)(5), and (a)(8). The record also reflects that the additional requirements of those sections are satisfied, as it is unlikely that Mother's drug addiction will be remedied in a reasonable period of time, as Mother has admittedly had an ongoing drug problem for six years. Also, the services available for Mother are unlikely to remedy the conditions, as every possibility has been offered to her and she has refused to follow through.

Mother's drug use has also led to a criminal background that dates back to 2009. She was charged with possession of a controlled substance, and received 6 months<sup>[r]</sup> probation. In April 2009, she was charged with retail theft and received one year of ARD ["Accelerated Rehabilitative Disposition"]. There was a second retail theft charge in March 2010, which resulted in 6 months<sup>[r]</sup> probation. In January 2011, she was charged with Driving Under the Influence and she received three to six months<sup>[r]</sup> probation. Then, she was arrested for solicitation to prostitution in April 2012. Mother's probation was revoked on the DUI because of the new solicitation charge. She was sent to the DRC ["Day Reporting Center"] program by her parole officer, and she was supposed to complete the Family Links intensive drug program, which she did not complete when she left against medical advice. (N.T. 12/20/[20]12, pg. 124 lines 20-23 and pg. 126 lines 1-11). She was incarcerated from July 29, 2012 to October 18, 2012 due to the violation. The parole officer testified that she will petition to revoke her parole again because of the positive drug tests, her failure to seek rehabilitation, and her failure to meet with the parole officer on a weekly basis. (N.T. 12/20/[20]12, pg. 129 lines 2-9).

This criminal history clearly demonstrates that Mother's problems with the law existed at the time of adjudication, and that Mother's trouble with the law continued up to and through the evidentiary hearing. Based on the testimony of the parole officer, it is not a condition that will be resolved within a reasonable period of time and the services that were available were offered and not followed through with by Mother. Therefore, the circumstances surrounding Mother's criminal history also satisfy the requirements for termination outlined in 23 Pa.C.S.A. § 2511(a)(2), (a)(5), and (a)(8).

In regards to Mother's mental health, Mother testified that she is diagnosed with bipolar disorder, OCD, and depression. According to the agency caseworker, Jessica Crowe, Mother has never obtained a mental health evaluation. (N.T. 12/20/[20]12, pg. 139 lines 20-22). Mother testified that she would like to obtain an evaluation, but she was rejected by [the ("Pennsylvania Department of Public Welfare")] for insurance in October 2012. (N.T. 12/20/[20]12, pg. 205 lines 10-25 and pg. 206 lines 1-3). Since that time, the only thing she did in an attempt to obtain insurance was make a phone call to Westmoreland Case Management the day before the evidentiary

hearing. (N.T. 12/20/[20]12, pg. 206 lines 13-20). According to Mother, she lost her insurance when the minor children were taken into the agency's custody. She has had substantial time to rectify the situation or seek other means to obtain a mental health evaluation. As required by the applicable statute provisions, the mental health concerns existed at the time of adjudication, and still exist to date due to Mother's lack of action to move forward in obtaining a mental health evaluation. The situation is unlikely to be remedied in a reasonable period of time, as Mother had over a year to make attempts at rectifying the situation.

The record goes even further in establishing the fact that Mother's drug use and mental health will not be rectified within a reasonable period of time, as required by the statute. Mother testified that she had some money saved. She did not use that money to obtain a mental health evaluation or to enter drug rehabilitation. Instead, she testified that she used that saved money to purchase the drugs that she tested positive for on December 5<sup>th</sup> and December 6<sup>th</sup>, and the drugs that she testified to using a week prior to the hearing date. (N.T. 12/20/[20]12, pg. 216 lines 19-25 and pg. 217 lines 1-18).

As to parenting, Mr. Hempel testified that Mother is no further ahead as a parent now then [sic] she was from the day he started, which was in July 2011. (N.T. 12/20/[20]12, pg. 82 lines 5-7). Mother did complete a parenting curriculum in 2010, but that was during the initial adjudication. She did not complete hands on parenting. Mr. Hempel testified that Mother's parenting did not have as high of a priority as her drug needs. (N.T. 12/20/[20]12, pg. 87 lines 7-11)[.] In fact, there has been no parenting instruction offered since July 2012 because it was determined that Mother needed to become seriously involved in drug treatment first. (N.T. 12/20/[20]12, pg. 81 lines 12-22). According to the agency caseworker, Mother's drug use and problems with the law definitely play a role in her deficit as a parent. (N.T. 12/20/[20]12, pg. 158 lines 19-20).

It was also difficult to advance Mother's hands on parenting due to the lack of visits that actually occurred with the minor children. Between July 2011 and January 2012, there were twenty-three visits scheduled and only fourteen occurred. Between January 2012 and July 2012, there were ten visits scheduled and only three occurred. Between July 2012 and



December 20, 2012, there were only three visits. From the time of adjudication to the date of termination, there have only been twenty visits, with only six occurring in 2012. (N.T. 12/20/[20]12, pg. 74 lines 17-24). Although Mother's periods of incarceration played a role in some of the missed visits, when she was asked by her caseworker why she was missing so many visits, Mother said that she was in a bad way and didn't want anyone to know. (N.T. 12/20/[20]12, pg. 143 lines 20-25). Mother further testified that she missed visits because warrants were out for her arrest, or she was using drugs. (N.T. 12/20/[20]12, pg. 213 line 25, pg. 214 lines 1-8). Mother was more concerned about her drug use and warrants than visiting with the minor children on a regular basis. Since Mother's parole officer indicated that she intended to revoke Mother's parole, and Mother has not successfully addressed the drug issues, it is like that this condition will continue to exist and not be remedied within a reasonable period of time.

Mother was also ordered to obtain housing and employment. Housing is still an issue for Mother because she does not have her own place. She is living in a duplex with a new boyfriend. Since July 2011, there have been extended period of time where no one knew where Mother was located. When she was asked about these time periods, she would say that she was living with friends. (N.T. 12/20/[20]12, pg. 141 lines 10-17). This occurred even while Mother claimed to be living with her boyfriend, as the caseworker testified that she attempted to leave messages for Mother with him and weeks would go by before she would get a call back. (N.T. 12/20/[20]12, pg. 173 lines 11-18). Since Mother failed to obtain housing, the agency was not able to provide any home maintenance training or budgeting.

In the two and a half years that Mr. Hempel has been involved with the case, Mother has never been employed. (N.T. 12/20/[20]12, pg. 92 lines 21-23). She was asked by the caseworker why she did not have employment, and Mother stated that she had to get clean before she could get a job. (N.T. 12/20/[20]12, pg. 142 lines 15-21). There was no employment for Mother between July 2011 and December 2012. Mother testified that the last time she worked was in 2011. (N.T. 12/20/[20]12, pg. 216 lines 11-14). This is again a condition that existed at the time of the adjudication, and it continues to exist at this time. It is unlikely to be resolved in a

reasonable amount of time, as Mother continues with her drug use and could possibly return to jail on another parole revocation. Mother's acts in regards to housing and employment again satisfy the requirements outlined in the applicable statute provisions and support the involuntary termination of Mother's parental rights.

As discussed above, Mother has not successfully completed anything from July 2011 forward. She has not complied with anything outlined in the July 8, 2011 Order of Court, and has made no progress toward alleviating the circumstances that led to placement. Jessica Crowe, agency caseworker, testified that there are no additional services that could be offered at this time that have not already been offered to Mother. (N.T. 12/20/[20]12, pg. 153 lines 4-9). Therefore, all provisions of 23 Pa.C.S.A. § 2511(a)(2), 23 Pa.C.S.A. § 2511(a)(5), and 23 Pa.C.S.A. § 2511(a)(8) have been satisfied and support the [trial court] Orders terminating Mother's parental rights.

Trial Court Opinion, 2/4/13, at 5-12.

The trial court's determinations regarding section 2511(a)(2), (5), and (8) are supported by ample, competent evidence in the record. ***In re Adoption of S.P.***, \_\_\_ Pa. at \_\_\_, 47 A.3d at 826-27.

Next, regarding section 2511(b), the court inquires whether the termination of Mother's parental rights would best serve the developmental, physical and emotional needs and welfare of the children. ***See In re C.M.S.***, 884 A.2d 1284, 1286-87 (Pa. Super. 2005). "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.***

With regard to section 2511(b), this Court has stated:

Once the statutory requirement for involuntary termination of parental rights has been established under subsection (a), the court must consider whether the child's needs and welfare will be met by termination pursuant to subsection (b). ***In re D.W.***, 856 A.2d 1231, 1234 (Pa. Super. 2004). In this context, the court must take into account whether a bond exists between child and parent, and whether termination would destroy an existing, necessary and beneficial relationship. ***In re C.S.***, [761 A.2d 1197, 1202 (Pa. Super. 2000)].

***In re Z.P.***, 994 A.2d at 1121. This Court has explained that the focus in terminating parental rights under section 2511(a) is on the parent, but it is on the child pursuant to section 2511(b). ***In re Adoption of C.L.G.***, 956 A.2d 999, 1008 (Pa. Super. 2008) (*en banc*).

With regard to section 2511(b), the trial court made the following findings of fact:

In accordance with 23 Pa.C.S.A. § 2511(b) regarding the concern for the developmental, physical, and emotional needs and welfare of the [C]hildren<sup>2</sup>, the [c]ourt received testimony from the CASA. Rhonda Miller. During her observation of the minor children with the [m]other, no emotional affection was demonstrated. (N.T. 12/20/[20]12, pg. 14 lines 7-10). She did not observe any hugs or kisses between Mother and the minor children. On the contrary, she did observe affection between the minor children and their foster family. (N.T. 12/20/[20]12, pg. 18 lines 10-11). They referred to the foster parents as mommy and daddy without prompting, and their foster brothers were treated as brothers. There were a lot of hugs, kisses, and smiles. She indicated that, when she first met the [C]hildren, they were very angry and always fighting with each other. (N.T. 12/20/[20]12, pg. 18 lines 12-15). L.N.B. also had issues with sitting still during visits with Mother. When she observes the minor children with [their] foster family, they are laughing, smiling, and sitting peacefully. They help one another and cooperate with their brothers. (N.T. 12/20/[20]12, pg. 18 lines 16-24). Ms. Miller testified that she was amazed at how at home

the minor children were with the foster family. (N.T. 12/20/[20]12, pg. 15 lines 10-12).

Neither Ms. Miller nor Ms. Crowe have [sic] ever heard the [C]hildren refer to biological mother when she is not around. Mr. Hempel indicated that Mother being in and out of their lives created problems for the kids, including attachment concerns and insecurity because they do not know where they are going to be at any given time. (N.T. 12/20/[20]12, pg. 87 lines 15-22). In fact, the foster mother testified that both children started experiencing issues once Mother's visits resumed after her incarceration. S.N.B. experienced behavioral issues, including tantrums. L.N.B. started wetting the bed, which she did not do before the visits and was only exhibited following the three visits with Mother. (N.T. 12/20/[20]12, pg. 180 lines 18-25, pg. 181 lines 1-13, pg. 182 lines 9-16).

The [c]ourt's Order of termination also best serves the needs and welfare of the minor children. Ms. Miller testified that it is imperative that the [C]hildren be permitted to be adopted so that they can move forward emotionally, educationally, and psychologically. (N.T. 12/20/[20]12, pg. 56 lines 1-7). They have endured multiple placements in a short period of time and it is in their best interests that Mother's rights are terminated so that they can experience some stability. The [C]hildren have been in their current foster home since August 2012. They have adjusted well and it is a pre-adoptive home. (N.T. 12/20/[20]12, pg. 146 lines 10-14). According to Ms. Crowe, no harm will come to the [C]hildren in terminating Mother's rights. (N.T. 12/20/[20]12, pg. 147 lines 18-20). The Guardian Ad Litem, Diane Murphy, Esq., indicated on the record that she recommended termination, stating that the minor children experienced a lack of parental care from Mother, that all services were offered, and Mother has not been able to rectify the situation. (N.T. 12/20/[20]12, pg. 232 lines 13-19). She stated that sufficient time has passed and the kids are entitled to permanency. (N.T. 12/20/[20]12, pg. 232 lines 20-21). They need peace and stability and a feeling of family, and that can only be achieved through termination of Mother's parental rights.

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<sup>2</sup> Needs and welfare of the child are the paramount consideration in deciding whether to terminate parental rights. ***In re S.D.T., Jr.***, 934 A.2d 703 (Pa. Super. 2007).

Trial Court Opinion, 2/4/13, at 5-12 (footnote in original).

In conclusion, the trial court stated the following.

Based on the aforementioned rationale and review of the record, Natural Mother's allegation in regard to this [c]ourt's abuse of discretion is without merit. This [c]ourt's Order serves to benefit the developmental, physical and emotional needs and welfare of the [Children]. The December 20, 2012 Orders are based upon the evidence and testimony presented to the [c]ourt throughout the related proceedings, which clearly establish that the requirements for involuntary termination of parental rights outlined in 23 Pa.C.S.A. § 2511(a)(2), 23 Pa.C.S.A. § 2511(a)(5), 23 Pa.C.S.A. § 2511(a)(8), and 23 Pa.C.S.A. § 2511(b) were satisfied by clear and convincing evidence. Accordingly, the [c]ourt terminated the parental rights of S.L.B. relative to the above-named minor children, S.N.B. and L.N.B.

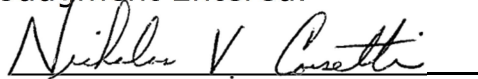
Trial Court Opinion, 2/4/13, at 14.

Mother testified that she loves her children and would like to be reunified with them, and would like additional time to rectify her drug use situation. **See** N.T., 12/20/12, at 217, 225. The trial court appropriately determined that Mother's love for her children did not outweigh her current inability to meet their needs and welfare. This Court has stated that a parent's own feelings of love and affection for a child, alone, will not preclude termination of parental rights. ***In re L.M.***, 923 A.2d 505, 512 (Pa. Super. 2007). We have stated that a "child's life 'simply cannot be put on hold in the hope that [a parent] will summon the ability to handle the responsibilities of parenting.'" ***In re Z.P.***, 994 A.2d 1108, 1125 (Pa. Super. 2010). Thus, the trial court did not abuse its discretion in terminating the parental rights of Mother pursuant to section 2511(b).

After a careful review of the record, we find that there was competent, clear and convincing evidence in the record to support the trial court's termination of Mother's parental rights to the Children under section 2511(a)(2), (5), (8), and (b). ***In re Adoption of S.P.***, \_\_\_ Pa. \_\_\_, \_\_\_, 47 A.3d at 826-27. Accordingly, we affirm the trial court's orders, and grant counsel's motion to withdraw.

Orders affirmed. Motion to withdraw as counsel granted.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Cussetti", is written over a horizontal line.

Deputy Prothonotary

Date: 6/5/2013