J-S15005-14
J-S15007-14
J-S15008-14

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: A.D., A MINOR, APPEAL OF GUARDIAN AD LITEM, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1602 MDA 2013

Appeal from the Order August 2, 2013
In the Court of Common Pleas of Franklin County
Orphans' Court at No(s): 31 Adopt 2013

IN THE INTEREST OF: C.D., A MINOR CHILD, APPEAL OF: GUARDIAN AD LITEM, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1603 MDA 2013

Appeal from the Order Entered August 2, 2013
In the Court of Common Pleas of Franklin County
Orphans' Court at No(s): 32 Adopt 2013

IN THE INTEREST OF: K.D., A MINOR, APPEAL OF GUARDIAN AD LITEM,	IN THE SUPERIOR COURT OF PENNSYLVANIA

Appellant	No. 1604 MDA 2013

Appeal from the Order Entered August 2, 2013
In the Court of Common Pleas of Franklin County
Orphans' Court at No(s): 33 Adopt 2013

IN THE INTEREST OF: K.D., A MINOR,	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: FRANKLIN COUNTY CHILDREN AND YOUTH SERVICES	No. 1874 MDA 2013

Appeal from the Order Entered September 19, 2013
In the Court of Common Pleas of Franklin County
Juvenile Division at No(s): CP-28-DP-0000076-2011

IN THE INTEREST OF: A.M.D., A MINOR,	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: FRANKLIN COUNTY CHILDREN AND YOUTH SERVICES, Appellant	No. 1875 MDA 2013

Appeal from the Decree September 19, 2013
In the Court of Common Pleas of Franklin County
Juvenile Division at No(s): CP-28-DP-0000077-2011

IN THE INTEREST OF: C.J.D., A MINOR,	IN THE SUPERIOR COURT OF PENNSYLVANIA

APPEAL OF: FRANKLIN COUNTY CHILDREN AND YOUTH SERVICES, Appellant	No. 1876 MDA 2013

Appeal from the Order Entered September 19, 2013
In the Court of Common Pleas of Franklin County
Juvenile Division at No(s): CP-28-DP-0000078-2011

IN THE INTEREST OF: K.R.D., A MINOR, APPEAL OF: GUARDIAN AD LITEM, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1878 MDA 2013

Appeal from the Order Entered September 19, 2013
In the Court of Common Pleas of Franklin County
Juvenile Division at No(s): CP-28-DP-0000076-2011

IN THE INTEREST OF: A.M.D., A MINOR, APPEAL OF: GUARDIAN AD LITEM, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1879 MDA 2013

Appeal from the Decree September 19, 2013
In the Court of Common Pleas of Franklin County
Juvenile Division at No(s): CP-28-DP-0000077-2011

IN THE INTEREST OF: C.J.D., A MINOR,	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF GUARDIAN AD LITEM,	
Appellant	No. 1880 MDA 2013

Appeal from the Order Entered September 19, 2013
In the Court of Common Pleas of Franklin County
Juvenile Division at No(s): CP-28-DP-0000078-2011

BEFORE: BOWES, OLSON, and FITZGERALD,* JJ.

MEMORANDUM BY BOWES, J.: **FILED MAY 21, 2014**

We consolidated these nine appeals *sua sponte* and listed them before the same panel for disposition.[1] In the appeals assigned docket Nos. 1602, 1603, and 1604 MDA 2013, the guardian *ad litem* appointed to represent K.R.D., A.D., and C.D. appeals from the orphans' court order entered on August 2, 2013. In that order, the orphans' court dismissed the petition filed by Franklin County Children and Youth Services ("CYS") to involuntarily terminate J.M.D.'s ("Mother") parental rights to the three children. At Nos.

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* Former Justice specially assigned to the Superior Court.

[1] There were initially twelve related appeals. In a separate opinion, we affirmed the orphans' court order terminating the parental rights of the children's father, D.R.D., II. Those appeals were assigned Nos. 1842-1844 MDA 2013.

1878, 1879 and 1880 MDA 2013, the guardian *ad litem* appeals the September 19, 2013 juvenile court order denying CYS's petition to change the children's permanency goal in the dependency proceedings from reunification to adoption.[2] For its part, CYS challenges the juvenile court's September 19, 2013 order in the appeals assigned docket Nos. 1874, 1875, and 1876 MDA 2013. As the nine appeals arise from identical facts and the trial court addressed the overlapping claims of error in concurrent opinions relating to the termination of parental rights and the goal change respectively, we consolidate the appeals for disposition, and after careful review, we reverse both orders and remand for further proceedings.[3]

CYS became involved with this family on December 12, 2011, when it received a referral from a child service agency in Texas alerting it that Mother and D.R.D., II ("Father") had relocated with K.R.D., A.D., and C.D. from Texas to Franklin County, Pennsylvania, in violation of an active child safety plan. The following day, CYS placed the children in its legal and physical custody. Among other things, the Texas child safety plan prohibited

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[2] Pursuant to the Adoption Act, 23 Pa.C.S. § 2101, *et seq*. involuntary termination of parental rights is conducted under the jurisdiction of the orphans' court. Conversely, permanency planning for dependent children is conducted in the juvenile or family division under the aegis of the Juvenile Act, 42 Pa.C.S. § 6301, *et seq*. In these cases, the same trial judge presided over both matters.

[3] Where appropriate, we refer to CYS and the guardian *ad litem* collectively as Appellants.

Father from being in contact with the children due to allegations that he sexually abused A.D. during August 2011 and due to a finding by the Texas agency of "reasons to believe," the evidentiary equivalent of the preponderance of the evidence, that the abuse occurred.

A brief history of Mother's and Father's extensive interactions with the Texas agency is warranted. During 1999, the Texas agency found "reasons to believe" Father physically abused his twin infant children from a prior relationship. Father was involved with the Texas agency again during 2001 based upon a "reason to believe" that he committed neglectful supervision of two other children, the two-month-old daughter he had with his second wife and his second wife's four-year-old son. No criminal convictions flowed from any of the previous incidents. Mother was aware of Father's interactions with the Texas agency for those prior incidents. Additionally, while Mother and Father were dating during 2003, the Texas agency found "reasons to believe" that Father sexually abused Mother's daughter from her former marriage. Rather than terminate her relationship with Father after that revelation, Mother relinquished custody of her eldest daughter to her ex-husband, the child's birth father. All of the events occurred several years before Mother discovered Father sexually abusing A.D. during August of 2011.

On January 19, 2012, the juvenile court adjudicated K.R.D., A.D., and C.D. dependent as the term is defined in 42 Pa.C.S. § 6302(1). The initial

permanency goal was reunification. Both parents were determined to be perpetrators of abuse. Mother was designated perpetrator by omission, and the trial court found aggravated circumstances that would have otherwise relieved the agency from providing reunification services. Nevertheless, the juvenile court directed the agency to establish reunification services for Mother. The court relieved CYS from an obligation to provide Father reunification services.

The three children, K.R.D., A.D., and C.D., currently reside together in a pre-adoptive foster home. At the time of the termination proceedings, the respective ages of K.R.D., A.D., and C.D. were eight, seven, and two years old.

Pursuant to the juvenile court's directive, CYS ordered services for Mother to participate in a parental fitness assessment, submit to psychiatric and psychological evaluations, attend parenting classes, maintain financial stability, appropriate housing, and consistent visitation with the children. Mother never submitted to a psychiatric evaluation, but she participated in two parental fitness assessments that included several psychological components. Following those assessments, Mother was directed to participate in extensive counseling and CYS presented to her a list of acceptable providers. Mother complied with the counseling requirement for seven months between June of 2012 and January of 2013. However, Mother did not utilize any of the counselors whom CYS identified, and the counselors

whom she selected independently proved to be ineffective at identifying and addressing her psychological needs. Mother stopped attending counseling between January and June 2013. Despite working at a telephone call center in Maryland, Mother has not obtained independent housing. Instead, she continues to reside rent-free with her parents in Pennsylvania.

In relation to visitation with the children, Mother has consistently attended her weekly supervised visitation. She was initially granted one hour of visitation per week, but the duration of the visits increased to three hours over the course of CYS's involvement. Visitation is still supervised, however, because of CYS's concerns that Mother is whispering inappropriate things to the children during the visitations.

On June 18, 2013, CYS filed a petition to terminate Mother's and Father's parental rights and to change the permanency goal for K.R.D., A.D., and C.D. from reunification to adoption. As it relates to Mother, CYS's petition for termination of parental rights averred that the children were removed from Mother's care on December 13, 2011, due to her failure to protect them from abuse following her knowing and voluntary violation of the Texas safety plan. ***See*** CYS Petition to Terminate Mother's Parental Rights, 6/18/13, at 2. Specifically, CYS alleged that while Mother acknowledged that she violated the safety plan by moving with Father and the children to Pennsylvania, she did not understand how her decision placed the children at risk. ***Id***. at 4.

During the ensuing hearings, CYS presented testimony from the CYS caseworker assigned to the family, two psychologists: Amy Taylor, Ph.D., who conducted an assessment of Mother's parental fitness, and Kasey Shienvold, Ph.D., who performed a bonding assessment among Mother, K.R.D., A.D., and C.D., the children's therapist, and the foster parents. The guardian *ad litem* presented Mother's testimony relative to the goal change proceedings. As we discuss below, neither Mother nor Father presented any evidence during the hearings.

With regard to the first issue we address in this appeal, the foster parents testified during the hearings that while K.R.D. and A.D. have been in their home, they have both disclosed additional incidents of sexual abuse perpetrated against them by Father while the family lived in Texas. The foster parents also testified that the two children indicated that they informed Mother about the additional incidents, but she failed to stop the abuse. K.R.D. and A.D testified *in camera*.[4] Both children indicated that additional abuse occurred in Texas and confirmed that they informed Mother of those episodes.

At the close of CYS's case-in-chief on July 29, 2013, the trial court convened a hearing in chambers to (1) determine the propriety of terminating only one parent's parental rights and (2) discuss the *sua sponte*

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[4] When the children testified in the courtroom, Mother was excluded.

dismissal, in the nature of a compulsory nonsuit,[5] of CYS's petition against Mother. During the conference, the trial court concluded that the evidence CYS adduced during its case-in-chief to support terminating Mother's parental rights was insufficient to proceed. Therefore, the court announced its intention to dismiss that petition, and accordingly, it immediately entered an order that formally dismissed CYS's petition to terminate Mother's parental rights. In reference to Mother's putative testimony concerning the yet unresolved permanency and goal change issues, the trial court advised Mother's counsel, "the worst thing [he] could do is put [Mother] on the stand and say that this [additional abuse] did not happen."[6] N.T., 8/2/13, at 13.

Thereafter, the court adjourned until August 2, 2013, when it reconvened the hearing regarding the termination of Father's parental rights and the goal change proceedings as to both parents. In the interim, Father, CYS, and the guardian *ad litem* filed petitions requesting that the trial court recuse from the ensuing termination and permanency proceedings. The trial court denied Father's and CYS's motions by orders entered on August 1,

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[5] Although the trial court styled its decision akin to a directed verdict, since these proceedings were not before a jury, we find that the court's decision is more aligned with a compulsory nonsuit. ***See*** Pa.R.C.P. 230.1.

[6] The in-chambers conference was not recorded. However, the trial court took judicial notice of its statement during a subsequent record proceeding. ***See*** N.T., 8/2/13, at 13.

2013, and it denied the guardian *ad litem's* motion in open court on the following day. ***Id***. at 8.

During the ensuing hearing on August 2, 2013, the guardian *ad litem* called Mother as a witness. After receiving additional evidence regarding the children's permanency goals, the trial court entered an order on September 19, 2013, that denied CYS's petition to change the children's permanency goal from reunification to adoption. Instead, the court directed CYS to provide Mother additional services to prepare her for reunification with the children. These timely filed appeals followed.[7]

In these consolidated appeals, we first address Appellants' assertions that the trial court erred in denying their respective motions to recuse. Next, we resolve the guardian *ad litem's* challenge to the orphans' court order dismissing CYS's petition to terminate Mother's parental rights pursuant to 23 Pa.C.S. § 2511(a) (2), (5), (8) and (b). Finally, we analyze Appellants' collective assertions that the juvenile court erred in denying the

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[7] The guardian *ad litem* filed its notice of appeal from the orphans' court order on September 3, 2013, the first business day following the expiration of the thirty-day appeal period on Sunday, September 1, 2013, and the observance of Labor Day on September 2, 2013. The guardian *ad litem* appealed the September 19, 2013 juvenile court order within the thirty-day appeal period. As noted, CYS did not appeal the orphans' court order. It filed a notice of appeal from the juvenile court order on October 21, 2013, the first business day following the expiration of the thirty-day appeal period on Saturday, October 19, 2013. Hence, these appeals are timely.

petition to change the permanency goal for K.R.D., A.D., and C.D. from reunification to adoption.

The denial of a motion to recuse is preserved as an assignment of error that can be raised on appeal following the conclusion of the case. ***Reilly by Reilly v. Southeastern Pennsylvania Transp. Authority***, 489 A.2d 1291, 1300 (Pa. 1985). We review a trial court's decision to deny a motion to recuse for an abuse of discretion. ***Vargo v. Schwartz***, 940 A.2d 459, 471 (Pa.Super. 2007). Indeed, our review of a trial court's denial of a motion to recuse is exceptionally deferential. ***Id***. ("[W]e extend extreme deference to a trial court's decision not to recuse[.]"). As we explained in ***Commonwealth v. Harris***, 979 A.2d 387, 391-392 (Pa.Super. 2009) (quoting in part ***Commonwealth v. Bonds***, 890 A.2d 414, 418 (Pa.Super. 2005)), "We recognize that our trial judges are 'honorable, fair and competent,' and although we employ an abuse of discretion standard, we do so recognizing that the judge himself is best qualified to gauge his ability to preside impartially." Hence, a trial judge should grant the motion to recuse only if a doubt exists as to his or her ability to preside impartially or if impartiality can be reasonably questioned. ***In re Bridgeport Fire Litigation***, 5 A.3d 1250, 1254 (Pa.Super. 2010).

In order to prevail on a motion for recusal, the party seeking recusal was required "to produce evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to the jurist's ability to preside

impartially." ***In re S.H.***, 879 A.2d 802, 808 (Pa.Super. 2005) (quoting ***Arnold v. Arnold***, 847 A.2d 674, 680–81 (Pa.Super. 2004)). Herein, Appellants failed to satisfy this burden of production.

Appellants argue that the trial court insinuated that it had already decided to deny CYS's petition for the goal change before it heard from Mother or the guardian *ad litem* in relation to the permanency review portion of the hearing. ***See*** Guardian *ad litem's* brief at 49-50; and CYS's brief at 18-19. Additionally, Appellants complain that the trial court's comment regarding the wisdom of Mother's proposed testimony denying the allegations that other abuse occurred was inherently prejudicial because it established a baseline expectation for Mother's testimony. ***See*** Guardian *ad litem's* brief at 50; CYS's brief at 20-21. For the following reasons, both of these arguments fail to establish any bias, prejudice, or unfairness that would raise a substantial doubt as to the trial court's ability to preside impartially.

First, neither party raised in their respective motions for recusal the primary assertion regarding the premature denial of CYS's petition for the goal change. CYS's motion alleged in pertinent part the fact that the court "indicat[ed] findings in chambers prior to closing the record impaired [CYS], the Guardian ad Litem, and Father from being able to build a complete record for appeal." CYS's Motion for Recusal, 8/1/13, at 2. Likewise, the guardian *ad litem's* motion argued, "for the Court to have offered findings in

chambers prior to the conclusion of all evidence by the parties with an interest in the proceedings, substantially impaired any party wishing to appeal any decision by the Court, the ability to do so with a complete record." Guardian *ad litem*'s Motion to Recuse, 8/1/13, at 3. Hence, Appellants' respective positions related to the comprehensiveness of the certified record for an ensuing appeal and not the court's alleged premature denial of CYS's petition for the goal change. As neither Appellant leveled before the trial court the instant argument concerning the premature determination of the goal change petition, it is waived, and they cannot assert that complaint now. ***See*** Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and may not be raised for the first time on appeal.")

Furthermore, assuming, *arguendo*, that Appellants had, in fact, raised and preserved this issue for our review, the argument would fail. Despite Appellants' protestations to the contrary, the trial court did not inform the parties that it was going to deny the goal change petition without hearing from the guardian *ad litem*. In reality, the trial court explained that, while it found that CYS failed to adduce sufficient evidence to survive a nonsuit, it had not reached a decision regarding the children's permanency in the dependency proceedings or CYS's petition to change the permanency goal from reunification to adoption. Specifically, before hearing any additional evidence following the agency's case-in-chief, the trial court indicated that it intended to proceed with an open mind. Indeed, the trial court's August 2,

2013 order dismissing CYS's petition to terminate Mother's parental rights explicitly informed the parties that it had not rendered a decision as to the pending petition for the goal change. After stating that it would decide the petition against Father upon consideration of the additional evidence and the parties' proposed findings of facts and conclusions of law, the court stressed, "The Court will also accept proposed findings of fact and conclusions of law with respect to the Agency's request that the permanency goal be changed with respect to each child to adoption, and with respect to this Court's obligation to conduct a permanency review." ***See*** Trial Court Order, 8/2/13. If, as Appellants suggest, the court had already decided to deny the goal change, the requested submissions would have been superfluous. Thus, the record belies the assertion that the trial court rendered a premature decision regarding the children's permanency goals.

The remaining recusal arguments concern the trial court's comment regarding the wisdom of Mother's proposed testimony concerning other allegations of abuse. The guardian *ad litem* and CYS complain that the statements influenced Mother's decision to forgo testifying on her own behalf and impaired their ability to present untainted evidence. Recognizing that Mother did, in fact, testify after the proceedings reconvened, Appellants suggest that Mother changed the tenor of that testimony regarding whether she was aware of the additional allegations of abuse to comply with the trial

court's recommendation that she avoid testifying that the additional abuse did not occur.

In her brief, Mother elucidates that, while she had intended to testify on her own behalf in the termination matter, she believed that her testimony was unnecessary once the trial court determined that CYS presented insufficient evidence to proceed against her in the termination proceedings. Moreover, she points out that she has consistently testified, including in the ensuing permanency proceedings, that the children did not tell her of the additional abuse. As we agree with Mother's position on this point, we reject assertions by the guardian *ad litem* and CYS to the contrary.

Simply stated, Appellants cannot satisfy their burden of production. The trial court's comment is not "evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially." ***In re S.H.***, ***supra*** at 808. Indeed, while the trial court's remark to Mother's counsel may have been imprudent, it did not influence Mother's testimony regarding the additional allegations of abuse. There was substantial evidence adduced in the case, including the Texas agency's finding of abuse by a preponderance of the evidence, to establish that the initial abuse occurred. Mother never disputed that occurrence and, in fact, she was the person who reported it to Texas authorities. However, Mother consistently testified that she never saw anything else happen to the children and that the children never told her of any additional abuse.

Indeed, when the guardian *ad litem* and CYS inquired about the allegations of additional abuse during the permanency review hearing, Mother indicated that she was not aware of the other incidents. Specifically, she stated that she had no knowledge of multiple sexual contacts between Father and the children. N.T., 8/2/13, at 52. Thereafter, she stated that, after learning of the children's alleged disclosures of additional abuse to the foster parents and their therapist, she now believed that "something has had to happen to my children[.]" ***Id***. at 54. She explained, "As a mother[,] I was never told[.] I took them to all of their doctor appointments. There was no sign of anything. I mean, I never witnessed anything, and the one time that I did walk in to what I believe was an inappropriate situation, that's whenever I called the police." ***Id***. at 55. Later, responding to a question that assumed that she was aware of the continuing abuse, Mother testified, "I know nothing happened and my children never came to me . . . [claiming] something . . . happened." ***Id***. at 113. She further elucidated, "I never physically saw something happening to my children, except for the one time with the inappropriate behavior, and I called the authorities and did what I needed to. And before that, my children never came to me and said anything." ***Id***.

Thus, contrary to the guardian *ad litem's* position that Mother suddenly altered her testimony and acknowledged the additional abuse in order to comply with the trial court's expectations of her, the record reveals that

Mother responded consistently to the inquiries leveled by the guardian *ad litem* and CYS. She testified that she had no prior knowledge of the multiple allegations of sexual abuse. She never altered her position that the children did not tell her about the additional incidents. However, she did explain that, upon learning of the children's disclosures to their therapist and foster parents, she now believes that something must have occurred. Even after acknowledging that something happened to the children, however, she reiterated what she had consistently advanced throughout this case, *i.e.*, that she had not been aware of the additional abuse. Thus, contrary to the Appellants' supposition regarding the motivation for Mother's belated acknowledgment of the additional acts of abuse, the foregoing excerpts from the certified record demonstrate that her position has remained consistent throughout. Accordingly, we reject Appellants' contention that Mother's testimony acknowledging that the abuse was ongoing was evidence of the court's bias, prejudice, or impartiality. As there is no indication that Appellants were deprived of a full and fair hearing regarding the goal change, no relief is due.

Having found that the trial court did not err in denying the motions for recusal, we next address the merits of these appeals. We first discuss the guardian *ad litem's* appeal from the order dismissing CYS's petition to terminate Mother's parental rights.

Simply stated, the guardian *ad litem* asserts that the evidence CYS adduced during the hearing established that Mother failed to alleviate the circumstances that necessitated placement, *i.e.*, protecting the children and addressing her counseling needs regarding the personality qualities that permitted the abuse to occur. For the following reasons, we agree.

We review the orphans' court's order to grant or deny a petition to involuntarily terminate parental rights for an abuse of discretion. ***In re C.W.U., Jr.***, 33 A.3d 1, 4 (Pa.Super. 2011). "We are limited to determining whether the decision of the trial court is supported by competent evidence." ***In re R.L.T.M.***, 860 A.2d 190, 191 (Pa.Super. 2004) (quoting ***In re C.S.***, 761 A.2d 1197, 1199 (Pa.Super. 2000)). However, "[w]e employ a broad, comprehensive review of the record in order to determine whether the trial court's decision is supported by competent evidence." ***In re C.W.U., Jr.***, ***supra*** at 4. If the orphans' court's findings are supported by competent evidence of record, we must affirm even if the record could support the opposite result. ***In re R.L.T.M.***, ***supra*** at 191-192.

The grounds for the termination of parental rights are governed by 23 Pa.C.S. § 2511(a) and (b). Herein, CYS alleged that grounds existed to terminate Mother's parental rights under § 2511(a)(2), (5), (8) and (b). As we find that CYS satisfied its obligation to present clear and convincing evidence to establish the statutory grounds for termination outlined in 2511(a)(8), we provide that 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:
>
> . . . .
>
> (8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.
>
> . . . .

23 Pa.C.S. § 2511 (a)(8).

We have explained our review of the evidence pursuant to § 2511(a)(8), as follows:

> In order 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.

In Re Adoption of M.E.P., 825 A.2d 1266, 1275-1276 (Pa.Super. 2003). Thus, in order to satisfy the requirements of § 2511(a)(8) in the case at bar, CYS was required to produce clear and convincing evidence that: (1) K.R.D., A.D., and C.D. have been removed from Mother for at least twelve months; (2) the conditions which led to the children's removal continue to exist; and (3) involuntary termination of parental rights would best serve K.R.D., A.D., and C.D.'s needs and welfare. ***See In re Adoption of R.J.S.***, 901 A.2d 502

(Pa.Super. 2006). "Notably, termination under Section 2511(a)(8), does **not** require an evaluation of Mother's willingness or ability to remedy the conditions that led to placement of her children." ***Id***. at 511 (emphasis in original).

In dismissing *sua sponte* CYS's petition to involuntarily terminate Mother's parental rights to the three children, the orphans' court focused upon Mother's compliance with the court-ordered directives and the counseling goals that mirrored those requirements. Specifically, the orphans' court found that Mother satisfied her goals as they related to engaging appropriate services, including submitting to two parental fitness evaluations, attending supervised visitation with the children, and maintaining employment and suitable housing. The court also observed that Mother participated in C.D.'s physical, occupational, and developmental therapy, and cooperated with the agency and executed the appropriate releases that the agency requested. Finally, the court noted that Mother completed the court-ordered bonding assessment with Dr. Shienvold. In sum, the orphans' court concluded that, since Mother complied with the forgoing directives and made measurable progress in her counseling, CYS failed to satisfy its burden of proving that the conditions that led to the agency's involvement continued to exist.

The orphans' court explained its rationale as follows:

> In considering all three grounds alleged for termination,

the Court considered the facts of record as noted in the Findings of Fact section, above. What the Court concluded was that Mother had fully complied with every court-ordered directive with the exception (possibly) of the directive that she make "measurable progress" in intensive outpatient counseling. With respect to counseling, Mother did enroll in and regularly participate in counseling with Kevin Harney from June 2012 until January 2013 when it became clear that no one involved in the case (the Agency, the GAL or the Court) was satisfied with Harney's work with Mother. However, Dr. Taylor testified that although the treatment provided by Harney was not what she would recommend, Mother had addressed the goals set by Harney. Dr. Taylor testified that Mother has been compliant with her directive to participate in therapy; however, she has not made progress. Dr. Taylor further explained that she believes and is hopeful that Mother can make "progress" with the right kind of therapy. This Court's conclusions should not be interpreted as its failure to recognize the importance of Dr. Taylor's observations and recommendations. Rather, this Court found that "measurable progress" must be determined by the Court, in light of all facts and circumstances, and not solely by Dr. Taylor's re-evaluation of Mother. Considering all of the facts, measurable progress was made.

Given Mother's full compliance with all other directives including maintaining employment and housing, totally removing Father from her life, and most importantly maintaining her relationship with the children through faithful, positive weekly visits and participation in C.J.D.'s various therapies, this Court could not find that the conditions which led to the children's removal from Mother cannot or will not be remedied within a reasonable period of time.

Further, the conditions which led to the children being removed from Mother's care were the violation of a safety plan and Mother's failure to protect the children from Father. Since the children have come into the Agency's custody, the Court was presented with no evidence that Mother has had contact with Father. She has legally ended their relationship by filing for and being granted a divorce. Physically, Mother and Father are thousands of miles apart with Mother in Pennsylvania and Father in Texas. She has maintained full-time employment to achieve financial independence from Father. She has maintained housing

> separate and apart from Father. Arguably the conditions which led to the children being removed from Mother's care no longer exist.

Trial Court Opinion, 9/19/13, at 25-27. Thus, emphasizing Mother's compliance with the directives over the shortcomings of her therapy and her persistent lack of parenting capacity, the trial court dismissed CYS's petition to terminate Mother's parental rights.

Notwithstanding our admittedly constrained standard of review, we disagree with the trial court's conclusion the Mother rectified the conditions that led to CYS's involvement with her family, *i.e.*, her inability or unwillingness to protect her children from harm. Indeed, contrary to the trial court's determination, our review of the record reveals that clear and convincing evidence existed to involuntarily terminate Mother's parental rights pursuant to § 2511(a)(8).

First, we observe that K.R.D., A.D., and C.D. have been in CYS's care since December 13, 2011, approximately eighteen months before CYS filed its petition to terminate Mother's parental rights. Hence, CYS satisfied the threshold requirement of § 2511(a)(8) that the children have been removed from Mother for at least twelve months. Next, the certified record reveals that the conditions that led to the children's removal from Mother's care in December 2011 continued to exist and that terminating Mother's parental rights would best serve K.R.D., A.D., and C.D.'s needs and welfare.

CYS's petition for termination of Mother's parental rights averred that the children were removed from Mother's care due to her failure to protect the children from Father's abuse following her knowing and voluntary violation of a safety plan that was established for the children's safety. ***See*** CYS Petition to Terminate Mother's Parental Rights, 6/18/13, at 2. Specifically, CYS alleged that while Mother acknowledged that she violated the safety plan by moving with Father and the children to Pennsylvania, she did not understand how her decision placed the children at risk. ***Id***. at 4.

During the termination proceedings, CYS presented the testimony of Amy Taylor, Ph.D., the clinical psychologist who performed parental fitness evaluations of Mother. Dr. Taylor has experience in an array of psychological fields, including forensic psychology, juvenile forensic evaluations, and adolescent, child, and adult therapy. N.T., 7/2/13, at 8. Following the brief *voir dire* regarding her qualifications, the trial court recognized Ms. Taylor as an expert in psychology and parental fitness. ***Id***. at 10.

Thereafter, Ms. Taylor testified that she performed two parental fitness evaluations on Mother. ***Id***. at 11. The purpose of the evaluations was to review the variables that affected Mother's parenting ability. ***Id***. at 24, 99. Those variables included Mother's psychological functioning, capacity, personality characteristics—"all of the things that [a]ffect her as a person and . . . as a parent." ***Id***. at 24. The first evaluation occurred on March 6,

2012, and the re-evaluation was completed approximately one year later. ***Id***. at 10-11. Dr. Taylor stressed the importance of having a variety of sources of information in completing the parental fitness evaluation. ***Id***. at 14, 39. She explained that the first evaluation consisted of an array of psychological testing and interviews with Mother, the various caseworkers the family had in Pennsylvania and Texas, and Mother's former therapist in Texas. ***Id***. at 12. She also reviewed the treatment summary from the Children's Advocacy Center ("CAC") in Texas.

As part of the second evaluation, Dr. Taylor conducted additional interviews with Mother as well as interviews with the guardian *ad litem*, the CYS caseworker, the counselor whom Mother engaged independently, Kevin Harney, and the children's therapist, Donna Roland. ***Id***. at 12-13. She also reviewed documents, memos, and reports from the Children's Aid Society concerning Mother's supervised visitation with the children, Mother's postings on Facebook, information from Mother's employer, treatment reports from Mr. Harney and his replacement, the children's treatment reports from Ms. Roland, and reports submitted by the children's foster parents. ***Id***. at 13. Finally, she reviewed the results of Dr. Shienvold's bonding evaluation among Mother and the children. ***Id***.

Following the initial evaluation, Dr. Taylor highly recommended that Mother engage in intensive outpatient counseling with a competent therapist who was capable of addressing Mother's needs. ***Id***. at 15-16. Dr. Taylor

identified Mother's need to break the cycle of her maladaptive and abusive relationships. ***Id***. at 16. The therapy objective was for Mother to parent effectively. ***Id***. at 16. Ultimately, the purpose was for Mother to engage in self-reflection in order to recognize dangerous situations and make appropriate decisions. ***Id***. at 21. That goal is based on the assumption that, if Mother could learn to be an effective and adaptive parent, she would be able to focus on the children's needs. ***Id***. at 16. Dr. Taylor stressed that Mother's personality characteristics are pervasive and that Mother has to address the causes of her negative behaviors. ***Id***. at 17, 102. She explained the importance that Mother be invested in the process and not merely attend sessions because they are required. ***Id***. at 17, 101. The process can take several years and, even then, it is not guaranteed. ***Id***.

As it relates to this appeal, Dr. Taylor defined measurable progress as the measured improvement over time and she confirmed that it entailed the recognition of issues and internalization of how to prevent the patterns from repeating. ***Id***. at 97. However, following the two parenting evaluations and review of Mother's therapeutic record, Dr. Taylor doubted that Mother was invested in the process or engaged in trying to change. ***Id***. at 19. Indeed, she ultimately found no evidence of Mother's progress toward the noted goals of internalization and recognition of the character traits and personality functioning that made Mother prone to manipulation and abuse. ***Id***. at 96.

Instead of addressing what Mother needed to improve upon to become a more effective parent and adaptive person, Mother focused on reuniting with the children. ***Id***. at 19-20. Dr. Taylor testified that, as of the date of the second evaluation, she doubted that Mother was capable of making the required changes. ***Id***. at 22. As an illustration that Mother was not invested in her care, Dr. Taylor pointed to the fact that Mother failed to obtain therapeutic counseling for approximately six months after the court determined that her former counselor, Mr. Harney, was not an appropriate therapist. ***Id***. at 22-23. Notwithstanding Mother's insinuation that she obtained counseling independently, Dr. Taylor confirmed that she had no record of any interim counseling sessions. ***Id***. at 62. Moreover, while Mother eventually re-engaged in therapy with Tammy Hedges, Dr. Taylor was concerned that Ms. Hedges's reports: (1) lacked any therapeutic information; (2) revealed that no therapeutic work had been completed during the five hours of therapy; and (3) demonstrated a bias and personal perspective that was more aligned with advocacy than therapy. ***Id***. at 31-32, 46, 83-84, 94-95. Indeed, as it relates to Ms. Hedges's conclusion that she could not fashion measurable goals for Mother because "There's nothing left for . . . [M]other to do, but pick up the pieces of what's left of her family and try to heal[,]" Dr. Taylor was disturbed that the therapist simply overlooked Mother's twenty-year history of subjecting herself and her children to harm and abuse. ***Id***. at 34, 85. In contrast to the five hours of

therapy that Mother spent with Ms. Hedges, Dr. Taylor stressed that it typically takes years of therapy to achieve measurable progress in patients "with the developmental history and maladaptive long standing pattern that [Mother] has[.]" ***Id***. at 47. Based upon her review of the various progress notes, her discussions with Mother's prior therapist, and the interviews with Mother, Dr. Taylor lacked confidence that Mother made the required changes. ***Id***.

In sum, Dr. Taylor testified within a reasonable degree of psychological certainty that Mother has not made sufficient progress to move forward toward reunification. ***Id***. at 29, 31. She was concerned that Mother lacked the capacity to raise her children healthy and adaptively. ***Id***. at 65. Observing that Mother had a history of maladaptive relationships and not just the isolated relationship with Father, Dr. Taylor opined that the fact that Mother no longer maintains contact with Father does not ensure the children's safety. ***Id***. at 90. Indeed, Dr. Taylor was fearful that Mother lacked the ability to protect the children. ***Id***. at 71. She stressed that Mother had left Father temporarily following the disclosure that he sexually abused her oldest daughter during 2003, but Mother eventually elected to relinquish custody of that child in order to return to Father. ***Id***. at 91-92.

While Dr. Taylor appreciated Mother's desire to reunite with the children, she did not believe that Mother's minor advances in her "personalty functioning" would be sufficient for Mother to change her pattern of

undesirable behavior. ***Id***. at 30, 88-89. She testified that Mother consistently attended the scheduled therapeutic sessions only because therapy was a prerequisite to reunification and not due to Mother's investment in her psychological well-being. ***Id***. at 50. For example, none of the items that Mother worked on with her therapist actually addressed the issues that she needed to resolve. ***Id***. Dr. Taylor explained,

> [Y]ou're hoping to have the end result of actual behavior change and cognitive restructuring. You want to see actual measurable change. Your have to set up specific goals[,] . . . not just maintaining a job. . . . [T]hat's just a piece of her functioning in her life. That's not her psychological functioning. That's not her recognition of [the]. . . personality characteristics [that have] impeded her. That's not what I'm seeing in anything.

Id. at 51.

Dr. Taylor also observed that while Mother could demonstrate a parental ability during brief intervals in a closed, supervised environment, she could not sustain that ability independently over a long duration. ***Id***. at 29-30, 89. Specifically, Dr. Taylor was concerned that the patterns of maladaptive behavior that plagued Mother for the last twenty years would persist. ***Id***. at 30. Thus, she explained that while it is beneficial that Mother maintained employment and stable housing at her parents' residence, those accomplishments were not evidence that she is following through with her emotional and psychological functioning. ***Id***. at 31. During cross-examination, Dr. Taylor further elucidated that Mother's compliance with the goals relating to maintaining employment and merely attending counseling

were superficial achievements and did not advance the purpose of her therapy, which was to force measurable progress in overcoming her twenty-year history of behavior. ***Id***. at 53-55. She opined that, after one year of weekly intense therapy, she expected Mother to have gained greater insight and recognition than Mother was able to demonstrate. ***Id***. at 56.

While Dr. Taylor noted Mother's accomplishments in satisfying her goals to maintain employment and stable housing, she stressed that the relevant inquiry went far beyond compliance with directives. ***Id***. at 99. Dr. Taylor evaluated whether Mother had the psychological capacity to protect herself and the children in her care. ***Id***. In explaining her position, Dr. Taylor discussed the distinctions between progress and compliance. ***Id***. at 111. While compliance is tantamount to doing what is directed, *i.e.*, showing up for therapy, progress is more nuanced and will not be attained unless the patient is invested. ***Id***. In this context, progress requires making adaptive changes to behavior. ***Id***. Dr. Taylor testified, "[I]f you are not invested, if you are just going through the motions, but . . . not actually participating and working with providers that are really trying to help you[,] . . . then it's just compliance. It's not change. It's not progress." ***Id***. Dr. Taylor continued that while Mother demonstrated compliance in this case, Dr. Taylor did not observe progress. ***Id***. at 112. "I don't see the progress. I don't see the changes in [Mother's] thinking. [Mother does not] verbalize how she's going to do things differently in the future. She could

not explain the different triggers." ***Id***. at 122-113. As Dr. Taylor believed that Mother had yet to make measurable progress toward learning how to handle a potentially abusive situation in order to protect herself or the children, she concluded that the circumstances that led to CYS's involvement and placement of the children continue to exist. ***Id***. at 113.

As noted *supra*, in dismissing CYS's petition to terminate Mother's parental rights, the orphans' court elevated Mother's compliance with the court-ordered directives and Mr. Harney's counseling goals above Mother's inability to adequately address the deep-seated concerns that impede her ability to parent capably. While the orphans' court acknowledged Mother's serious parental shortcomings, it found that Mother made measurable progress based solely upon her compliance with the chosen directives and the fact that she ceased contact with Father. The court's logic is flawed. While a trial court is not required to accept an expert's conclusion, it is an abuse of discretion for a court to totally discount uncontradicted expert testimony as unpersuasive. ***See M.A.T. v. G.S.T.***, 989 A.2d 11, 19-20 (Pa.Super. 2010).

First, although the trial court was not required to accept Dr. Taylor's conclusion that Mother did not make measurable progress, in light of Dr. Taylor's definition of measurable progress and her explanation regarding the difference between compliance and progress in this scenario, it was an abuse of discretion for the court to discount her testimony as unpersuasive

and rely instead upon Mother's compliance. Moreover, even to the extent that the orphans' court did not completely discount Dr. Taylor's expert testimony by exalting Mother's compliance over any psychological improvement, the record belies the court's legal conclusion that the conditions which led to the children's placement no longer exist.

Contrary to the trial court's perspective, the conditions that led to CYS's intervention were not related to Mother's employment, housing, visitation, or marital status. In reality, the genesis of CYS's involvement in this case was Mother's demonstrated lack of parental capacity based on her inability or unwillingness to protect her children. Mother's decisions to violate the Texas safety plan and to continue to provide Father access to the children are merely examples of her diminished parental capacity. Accordingly, the fact that Mother resolved the isolated situation relating to Father's contact with the family, partially due to Father's extradition and incarceration, does not demonstrate that Mother has adequately addressed her ongoing pattern of maladaptive behaviors that led her to believe that moving the children with Father to Pennsylvania was acceptable. As made patently clear by Dr. Taylor's testimony following two comprehensive evaluations and her discussion of Mother's therapeutic regimen, the conditions that impaired Mother's parental capacity have not been resolved. Since the underlying conditions continue to exist, we conclude that CYS established its burden of proving by clear and convincing evidence the

statutory grounds to terminate Mother's parental rights pursuant to § 2511(a)(8). Accordingly, we reverse the orphans' court's order dismissing CYS's petition to terminate Mother's parental rights.

Next, we address the needs-and-welfare analysis under § 2511(b). That section provides as follows:

> **(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(b).

While the Adoption Act does not mandate that the trial court consider the effect of permanently severing parental bonds, our case law does require it where, as here, bonds exist to some extent. ***See In re E.M.***, 620 A.2d 481, 485 (Pa. 1993). We have emphasized that while a parent's emotional bond with his or her child is a major aspect of the § 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, 535-536 (Pa.Super. 2008). Indeed, 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 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). As we explained in ***In re J.W.***, 578 A.2d 952, 958 (Pa.Super. 1990) (emphases in original), "[A] court may properly terminate parental bonds which exist **in form** but not **in substance** when preservation of the parental bond would consign a child to an indefinite, unhappy, and unstable future devoid of the irreducible minimum parental care to which that child is entitled."

Moreover, as we explained in ***In re K.Z.S.***, 946 A.2d 753, 763 (Pa.Super. 2008),

> 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).

The extent of the orphans' court's bond-effect analysis depends upon the circumstances of a particular case. ***In re K.Z.S.***, ***supra*** at 763. Instantly, the orphans' court did not engage in the § 2511(b) analysis because it had concluded that CYS failed to establish the statutory grounds for terminating Mothers' parental rights pursuant to § 2511(a). While we are tempted, at least initially, to perform the required analysis in this children's fast track case based upon the ample evidence in the certified record, we are constrained to remand the matter to the orphans' court to perform the need-and-welfare analysis in the first instance.

We observe that since the record contains abundant evidence regarding the existence and nature of the parent-child bonds and the developmental, physical, and emotional needs and welfare of the children, additional hearings will not be required unless the orphans' court desires to update the children's status on this record. Specifically, in its current form, the certified record includes Dr. Shienvold's testimony regarding his bonding assessment and his conclusion with a reasonable degree of psychological certainty that, while the children maintain an attachment with Mother, in light of the strong bond that they have with the foster parents, the parent-child relationships can be severed in these cases without significant risk of long-term consequences. N.T. (P.M.), 7/2/13, at 22, 75. Essentially,

Dr. Shienvold concluded that the children's strong healthy bonds with the foster family would mitigate the risks associated with terminating their attachment to Mother. ***Id***. at 24.

The certified record also includes testimony from the children's therapist and foster parents that establishes that the children are currently thriving in their pre-adoptive home. On remand, the trial court is directed to perform its needs and welfare analysis in light of the forgoing evidence and mindful of the children's safety needs. Likewise, it must consider the evidence establishing the love, comfort, security, and stability the children enjoy with their foster family, the importance to the children of continuing those beneficial relationships, and the fact that those relationships will mitigate the risks concomitant with severing their attachment to Mother.

Finally, we address Appellants' contention that the trial court erred in denying CYS's petition to change the children's permanency goal from reunification to adoption. For the reasons that follow, we reverse the order denying the request for the goal change.

We reiterate the appropriate standard of review of a juvenile court's permanency determination as follows:

> [T]he standard of review in dependency cases requires an appellate court to accept the findings of fact and credibility determinations of the trial court if they are supported by the record, but does not require the appellate court to accept the lower court's inferences or conclusions of law. Accordingly, we review for an abuse of discretion.

In re A.B., 19 A.3d 1084, 1088 (Pa.Super. 2011) (quoting ***In re R.J.T.,*** 9 A.3d 1179, 1190 (Pa. 2010)).

As this court has previously stated, "Placement of and custody issues pertaining to dependent children are controlled by the Juvenile Act 42 Pa.C.S. §§ 6301–65, which was amended in 1998 to conform to the federal Adoption and Safe Families Act ("ASFA"). ***Id***. at 1088 (quoting ***In re N.C.***, 909 A.2d 818, 823 (Pa.Super. 2006)). We continued, "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." ***In re A.B., supra*** at 1088. Accordingly, "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." ***Id***. Indeed, [s]afety, permanency, and well-being of the child must take precedence over all other considerations, including the rights of the parents." ***Id***.

Similarly, in ***In re A.K.***, 936 A.2d 528, 534 (Pa.Super. 2007), this Court stressed that the focus of dependency proceedings is upon the best interest of the children and that those considerations supersede all other concerns, "including the conduct and the rights of the parent." Again, in ***In the Interest of D.P.***, 972 A.2d 1221, 1227 (Pa.Super. 2009), we explained, "In a change of goal proceeding, the best interests of the child, and **not the interests of the parent**, must guide the trial court, and the parent's rights

are secondary." ***Id***. (emphasis added). Likewise, this Court has held, "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 N.C.***, ***supra*** at 824 (quoting ***In re Adoption of M.E.P., supra*** at 1276).

With those principles in mind, we outlined the relevant considerations set forth in the Juvenile Act regarding permanency planning:

> Pursuant to § 6351(f) of the Juvenile Act, when considering a petition for a goal change for a dependent child, the juvenile court is to consider, *inter alia*: (1) the continuing necessity for and appropriateness of the placement; (2) the extent of compliance with the family service plan; (3) the extent of progress made towards alleviating the circumstances which necessitated the original placement; (4) the appropriateness and feasibility of the current placement goal for the children; (5) a likely date by which the goal for the child might be achieved; (6) the child's safety; and (7) whether the child has been in placement for at least fifteen of the last twenty-two months.

In re A.B. supra at 1088-89. Additionally, courts must consider whether reasonable efforts were made to finalize the permanency plan in effect. ***See*** 42 Pa.C.S. § 6351(f)(5.1).

Herein, in its September 19, 2013 opinion and order denying the petition to change the children's permanency goal the juvenile court addressed each of the relevant factors enumerated in § 6351(f). However, despite identifying the appropriate considerations, the crux of the juvenile court's rationale and the primary reason for its decision to deny CYS's request to change the children's permanency goal to adoption was the juvenile court's view that CYS was responsible for Mother's failure to make

adequate progress with her counseling. The court essentially determined that CYS did not provide Mother all of the support and services necessary to achieve reunification. That is, the juvenile court ruled that CYS failed to make reasonable efforts to finalize the permanency plan in effect, *i.e.*, reunification. It effectively concluded that the one factor relating to the quality of CYS's services superseded other considerations that more directly affected the children's safety, protection, and physical, mental, and moral welfare.

In denying CYS's request for a goal change, the juvenile court reasoned,

> At the risk of offending competent, experienced Agency staff who the Court has on many occasions in many cases observed to be dedicated to protecting the welfare of those not able to protect themselves, this Court is convinced that the Agency determined from its first involvement in this case that these children should not be returned to their mother because of her demonstrated pattern of failing to protect them from their abusive father. At the onset of this case, it would have been quite difficult to disagree with the Agency's position. However, in June 2012 when the Agency first asked the Court to set the permanency goal at adoption, this Court, based on credible expert testimony from Dr. Leaman and Dr. Taylor, found that Mother's ability to parent the children was salvageable and that reunification was an appropriate and feasible goal. Since June 2012, Mother has (albeit reluctantly at first — having to overcome her own feeling that she had been victimized by "the system" in having her children taken away from her, as well as her mistrust of the Agency) done what she has been asked to do by this Court. The Agency's actions demonstrate that it has done little to re-evaluate its position in light of Mother's nearly full compliance with Court directives. Instead, the Agency has scheduled appointments, arranged visits, and monitored the children in foster care while waiting for the calendar pages to

> turn and for the fifteenth month in care to arrive so that involuntary termination proceedings can commence. Rather than making sure that Agency engaged service providers (i.e. Donna Roland) have complete information upon which to render their opinions regarding reunification, this case is marked by a complete lack of coordination of services and sharing of necessary information.

Trial Court Opinion, 9/19/13, at 24-25 (footnote omitted).

While the juvenile court recognized the time constraints under § 6351(f)(9) and our legislature's adoption of the relevant policies underlying ASFA, it ultimately concluded,

> . . . However, because important work toward reunification remains undone, this Court cannot direct that adoption be the permanency goal at this time. Mother's actions demonstrate her solid commitment to reunification with her children. While the children have clearly bonded with their foster family, they have not been given the opportunity to work through their trust issues with their mother in a therapeutic setting. They have not been given the opportunity to feel safe and protected in her care. For the reasons fully discussed above, reunification with Mother is not an illusory goal. Therefore, reunification with Mother must remain the permanency goal. Reunification with Mother remains best suited to the safety, protection, and physical, mental, and moral welfare of the children.

Trial Court Opinion, 9/19/13, at 26.

As noted, the trial court's rationale rests almost entirely upon its criticism of CYS's coordination of Mother's therapeutic counseling. The juvenile court observed that Mother selected her counselors independently and with the assistance of those counselors fashioned ineffective therapeutic goals. ***Id***. at 16-17. While the court stated that it would not excuse Mother for failing to make measurable progress addressing the issues that her

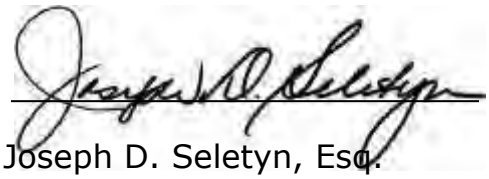
intensive outpatient therapy was intended to confront, that is precisely what it did. ***Id***. at 17-18. Instead of holding Mother responsible for her poor judgment in selecting counselors whom she deemed acceptable, the trial court criticized CYS for not being more proactive in reigning in Mother's independence. It also faulted CYS for what it deemed to be the agency's failure to coordinate reunification services among providers.

The trial court cites several examples of what it considers the agency's failures. While we find that the record belies several of its findings in this regard, that fact is not why we reverse the order denying CYS's request for the goal change. In actuality, we reverse based upon the juvenile court's preoccupation with CYS's perceived failures that caused it to overlook the singularly salient consideration before it, the children's best interest. As we discussed at length *supra*, Mother was incapable of providing parental care or rectifying the conditions that led to the children's placement and there was no indication that she was likely to acquire the requisite insight by January 2014, the arbitrary date the juvenile court selected for reunification. Meanwhile, the children are thriving in their pre-adoptive foster home. By forcing reunification efforts at this late juncture despite Mother's documented lack of measurable progress and the children's healthy growth and development with an adoptive resource, the trial court elevated its concern for Mother over the children's safety, protection, and physical, mental, and moral welfare.

The record before us indicates that adoption is the appropriate goal. The trial court's decision to compel family counseling because it was unsatisfied with CYS's reunification efforts impermissibly tolls the children's permanency and well-being in favor of Mother's interest in reunification. Notwithstanding the trial court's concern for Mother's "solid commitment to reunification," the clear and convincing evidence in the certified record demonstrates that Mother remains unable to care for and protect her children. ***Id***. at 26. The trial court's fixation with preparing the children for reunification notwithstanding Mother's demonstrated lack of parental capacity is contrary to their best interests. As of the date of the order denying the request for the goal change, the children had been in CYS's placement for over twenty-one months and Mother still was not prepared to resume custody. The children require permanency and security. In refusing to change the children's goal to adoption, the trial court simply disregarded their permanency needs in favor of Mother's interest. Accordingly, we reverse the order of the trial court denying CYS's petition to change the goal for K.R.D., A.D., and C.D. from reunification to adoption.

Orders reversed. Cases remanded for further proceedings. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/21/2014