

August 1, 2013. Testifying at the hearings were COBYS Family Services caseworker, Krista Burkholder¹; licensed clinical psychologist, Suzanne Ail; and Father. Mother did not testify at the first hearing and did not appear at the second hearing.

The first time that Child entered placement, there were concerns regarding Mother's drug abuse, her children's truancy, and her pending eviction from her residence.² N.T., 5/30/13, at 64-65. When a CYS caseworker went to Mother's home for a scheduled appointment, Mother was not there and her children, who were home alone, did not know where she was or how to reach her. CYS placed the children, including Child, in foster care on April 13, 2007. The trial court found Child dependent and placed him in the legal and physical custody of CYS in an order entered May 24, 2007.

CYS created a Child Permanency Plan (CPP) for Mother and Father with the goal of reunification. Mother successfully completed the goals of that plan and CYS returned Child to her on March 4, 2008. *Id.*, at 63. Father did not complete the goals of that CPP.

During 2009 and 2010, CYS received multiple referrals regarding Mother's drug abuse and her children's lack of basic needs and supervision.

¹ COBYS Family Services is a contract provider of casework services to CYS. N.T., 5/30/13, at 62.

² Child is the only one of Mother's children who is the subject of this litigation.

Id., at 65. On October 13, 2010, CYS received a report that the police had executed a search warrant at Mother's home and discovered a stolen firearm, marijuana, cocaine, and drug paraphernalia. Mother admitted to, and was prosecuted for, prostitution. On October 19, 2010, Mother told CYS that she was having significant mental health issues and that she had relapsed on drugs.

On October 21, 2010, the Agency received a phone call from Mother during which her speech was slurred and her thought processes were incoherent. **Id.** Mother showed up at the Agency later on that day with Child. She stayed in the parking lot and screamed angrily. **Id.**, at 67-68. Mother almost hit several cars as she drove out of the parking lot. **Id.**, at 68. The police found Child and his half-brother, M., the next day; CYS placed them in foster care. **Id.**, at 68. CYS again established a CPP for Mother with the goal of reunification. **Id.** Mother, however, never completed the goals of that CPP, and contacted CYS only twice in the year prior to the hearing on her parental rights, both times by telephone. **Id.**, at 73. Child has been in placement since October 22, 2010; Mother has visited him twice during that period. **Id.**, at 64, 68, 75.

The trial court adjudicated Child dependent once again and awarded legal custody of Child to CYS on December 30, 2010. **Id.** At the same time, CYS established another CPP for Father with the goal of reunification. The goals for Father were the same during both of Child's placements. Even

though CYS established a goal of reunification for Father, we note that Father has never had custody of Child. N.T., 8/1/13, at 47-48.

Father attended and successfully completed a parenting class but was unable to implement the skills taught there. Child reacts to Father with fear and withdrawal and removes himself from Father's presence. N.T., 5/30/13, at 76. Mother had obtained a protection from abuse order against Father at the time of the second placement. *Id.*, at 76. A domestic violence evaluation of Father resulted in a recommendation for ongoing therapy, but Father was discharged for inconsistent attendance on July 25, 2012. Father resumed therapy two months after the petition to terminate his parental rights was served on him but Father has not provided CYS with any treatment plan nor has he provided any reports of his progress.

Father reported that he was receiving unemployment compensation and working part-time serving at banquets but did not provide pay stubs as required by his CPP. *Id.*, at 78; N.T., 8/1/13, at 10.

At the time of the hearing, Father was behind in his required payments at a transitional living shelter. Until four months after the petition to terminate his parental rights was filed, Father lived in an apartment, which he was told was insufficient for Child. He moved into the Transitional Living Center where he had one room with two beds. N.T., 5/30/13, at 78-79. As the name of the facility states, this is a temporary residence. His CPP required him to provide monthly rent receipts. Father only provided two of

those receipts, even though his caseworker's office is across the street from the Transitional Living Center. N.T., 8/1/13, at 8-9. One rent receipt was received in 2012, and one rent receipt was received in 2013. N.T., 5/30/13, at 78-80.

Father attends supervised visits with Child, but he sits and sleeps or watches Child play during visits; he does not participate. When Child's older half-brother, M., accompanies him to visits, Father upsets Child by interacting with M. and ignoring Child. Child leaves the room when this happens. *Id.* at 79-82. Father's visits are monitored - to prevent Child from wandering the building alone.

Father requested a bonding evaluation that was performed by Dr. Suzanne Ail. Dr. Ail concluded that Father and Child have an insecure attachment. *Id.*, at 8. According to Dr. Ail, Child demonstrates controlling, non-compliant, disrespectful and avoidant behavior towards Father. Child also displays anger, aggression and frustration towards Father. Father stated that he needs help in caring for a child and is ambivalent about his ability to care for Child. N.T., 8/1/13, at 43.

Child has a very strong attachment to his half-brother, who has been his most consistent caregiver, and he is forming a secure attachment to his foster parents, who plan to adopt him. *Id.*, at 11, 53-54.

The trial court entered its decree terminating Mother's and Father's parental rights and changing Child's goal to adoption on October 7, 2013.

Father filed his notice of appeal and concise statement of errors complained of on appeal on October 24, 2013. Mother filed her notices of appeal and concise statements of errors complained of on appeal on November 5, 2013.

Mother raises the following question on appeal:

I. Whether the Court erred when it terminated Mother's rights?

Mother's Brief, at 8.

Father raises the following questions on appeal:

A. Whether the Court erred when it terminated Father's rights when Father had successfully completed his reunification plan[?]

B. Whether the Court erred when it determined that it was in the Child's best interests to terminate Father's rights[?]

Father's Brief, at 6.

Our standard of review is as follows:

In an appeal from an order terminating parental rights, our scope of review is comprehensive: we consider all the evidence presented as well as the trial court's factual findings and legal conclusions. However, our standard of review is narrow: we will reverse the trial court's order only if we conclude that the trial court abused its discretion, made an error of law, or lacked competent evidence to support its findings. The trial judge's decision is entitled to the same deference as a jury verdict.

In re L.M., 923 A.2d 505, 511 (Pa. Super. 2007) (citations omitted).

Further, we have stated:

Where the hearing court's findings are supported by competent evidence of record, we must affirm the hearing court even though the record could support an opposite result.

We are bound by the findings of the trial court which have adequate support in the record so long as the findings do not evidence capricious disregard for competent and credible evidence. The trial court is free to believe all, part, or none of

the evidence presented, and is likewise free to make all credibility determinations and resolve conflicts in the evidence. Though we are not bound by the trial court's inferences and deductions, we may reject its conclusions only if they involve errors of law or are clearly unreasonable in light of the trial court's sustainable findings.

In re M.G., 855 A.2d 68, 73-74 (Pa. Super. 2004) (citations omitted).

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

When we review a trial court's order to change the placement goal for a dependent child to adoption, our standard is abuse of discretion. In order to conclude that the trial court abused its discretion, we must determine that the court's judgment was manifestly unreasonable, that the court did not apply the law, or that the court's action was a result of partiality, prejudice, bias or ill will, as shown by the record.

In the Interest of S.G., 922 A.2d 943, 946 (Pa. Super. 2007).

In order to affirm the termination of parental rights, this Court need only agree with any one subsection of Section 2511(a). ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*).

Requests to have a natural parent's parental rights terminated are governed by 23 Pa.C.S.A. § 2511, which provides, in pertinent part:

§ 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.

. . .

(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.

It is well settled that a party seeking termination of a parent's rights bears the burden of proving the grounds to so do by "clear and convincing evidence," a standard which requires evidence that is "so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts in issue." ***In re T.F.***, 847 A.2d 738, 742 (Pa. Super. 2004). Further,

A parent must utilize all available resources to preserve the parental relationship, and must exercise reasonable firmness in resisting obstacles placed in the path of maintaining the parent-child relationship. Parental rights are not preserved by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with his or her physical and emotional needs.

In the Interest of K.Z.S., 946 A.2d 753, 759 (Pa. Super. 2008) (internal citations omitted).

The fundamental test in termination of parental rights under Section 2511(a)(2) was long ago stated in the case of ***In re Geiger***, 331 A.2d 172 (Pa. 1975). There the Pennsylvania Supreme Court announced that under what is now Section 2511(a)(2), that the petitioner for involuntary termination must prove “[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.” ***Id.***, at 173.

The Adoption Act provides that a trial court “shall give primary consideration to the developmental, physical and emotional needs and welfare of the child.” 23 Pa.C.S.A. § 2511(b). The Act does not make specific reference to an evaluation of the bond between parent and child but our case law requires the evaluation of any such bond. ***See In re E.M.***, 620 A.2d 481 (Pa. 1993). However, this Court has held that the trial court is not required by statute or precedent to order a formal bonding evaluation performed by an expert. ***In re K.K.R.-S.***, 958 A.2d 529, 533 (Pa. Super. 2008).

In regard to incarcerated persons, our Supreme Court recently stated:

[I]ncarceration is a factor, and indeed can be a determinative factor, in a court’s conclusion that grounds for termination exist under § 2511(a)(2) where the repeated and continued incapacity of a parent due to incarceration has caused the child to be without essential parental care, control or

subsistence and that [sic] the causes of the incapacity cannot or will not be remedied.

In re Adoption of S.P., 47 A.3d 817, 828 (Pa. 2012).

. . .

[W]e now definitively hold that incarceration, while not a litmus test for termination, can be determinative of the question of whether a parent is incapable of providing “essential parental care, control or subsistence” and the length of the remaining confinement can be considered as highly relevant to whether “the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent,” sufficient to provide grounds for termination pursuant to 23 Pa.C.S. § 2511(a)(2). ***See e.g. Adoption of J.J.***, 515 A.2d at 891 (“[A] parent who is incapable of performing parental duties is just as parentally unfit as one who refuses to perform the duties.”); [***In re:***] ***E.A.P.***, [944 A.2d 79, 85 (Pa. Super. 2008)] (holding termination under § 2511(a)(2) supported by mother’s repeated incarcerations and failure to be present for child, which caused child to be without essential care and subsistence for most of her life and which cannot be remedied despite mother’s compliance with various prison programs). If a court finds grounds for termination under subsection (a)(2), a court must determine whether termination is in the best interests of the child, considering the developmental, physical, and emotional needs and welfare of the child pursuant to § 2511(b). In this regard, trial courts must carefully review the individual circumstances for every child to determine, *inter alia*, how a parent’s incarceration will factor into an assessment of the child’s best interest.

47 A.3d at 830-831.³

Our examination of the record reveals that the trial court’s decision to terminate Mother’s and Father’s parental rights under Sections 2511(a)(2) and (b), and to change Child’s goal to adoption is supported by clear and

³ Mother was in Lancaster County Prison for a probation violation from September 21, 2012, to November 29, 2012. N.T., 5/30/13, at 72. Nothing in the record demonstrates that this brief incarceration had any material effect on this case.

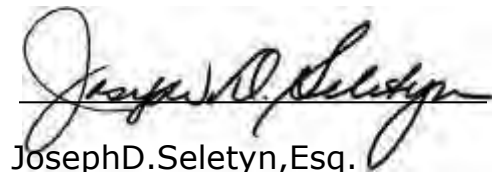
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convincing evidence, and that there was no abuse of the trial court's discretion.

We have read the trial court opinions in this matter and we are satisfied that the trial court's analysis in both is accurate and complete. Accordingly, we affirm the trial court's decree on the basis of the thoughtful, concise, and well-written opinions of the Honorable Jeffrey J. Reich, that we adopt as our own.

Decree affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/12/2014

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

IN RE:

K [REDACTED] E [REDACTED]-B [REDACTED]
INVOLUNTARY TERMINATION

No. 1265 of 2012

OPINION SUR APPEAL

This opinion is written in response to an appeal from this Court's grant of a decree which involuntarily terminated the parental rights of K [REDACTED] R. P [REDACTED] as birth parent of K [REDACTED] P [REDACTED]-B [REDACTED] (hereinafter, referred to as "K.P.-B.").

The Lancaster County Children and Youth Social Service Agency (hereinafter, the "Agency") filed a Petition to Terminate Parental Rights on June 7, 2012.

K [REDACTED] R. P [REDACTED] (hereinafter, "Mother") was personally served with the Agency's petition by a process server on July 31, 2012.

The biological father of K.P.-B. is E [REDACTED] B [REDACTED] (hereinafter, "Father"). Father filed a separate appeal to the Superior Court of this Court's decree which terminated his parental rights before Mother filed this present appeal. This Court's Opinion Sur Appeal in respect to the Father's appeal has already been submitted to the Superior Court separately.

Hearings to address the issue of whether parental rights should be terminated were conducted on May 20, 2013, and August 1, 2013. The termination hearings were delayed due to Father's request for the scheduling and completion of a bonding

assessment. The Court's Decree terminating the parental rights was signed on October 7, 2013. Mother filed a timely notice of appeal on November 5, 2013.

PROCEDURAL HISTORY

The Agency originally filed for custody of K.P.-B. on April 16, 2007. At that time, Mother had custody of him. An Order of Adjudication was issued on April 19, 2007, finding K.P.-B. to be dependent. The issue at the time was Mother's inability to care for K.P.-B. Subsequently, a Disposition Order was entered May 24, 2007, which approved a child's permanency plan. By Order dated March 4, 2008, physical and legal custody of K.P.-B. was released to Mother.

A Petition for Temporary Custody of the Child was filed by the Agency on October 22, 2010. At the time of the October 22, 2010, filing, K.P.-B. was again in Mother's custody. A Shelter Care Order was issued on November 15, 2010, which continued K.P.-B. in the care of the Agency. An Order of Adjudication and Disposition-Child Dependent was issued December 30, 2010, which approved a child's permanency plan with a primary goal of reunification with the parents. Thereafter, permanency review hearings were conducted periodically.

The objectives for Mother as outlined in the child permanency plan in effect from the December 30, 2010, disposition are: (1) to improve mental health functioning to the extent she

can care for her child; (2) to remain free from drugs and misuse of alcohol; (3) to remain crime-free; (4) to use good parenting skills; (5) to be financially stable in order to provide for herself and her child; and, (6) to show commitment to the child (N.T. 05/30/13 at pages 68-74)

In its Petition to Terminate Parental Rights, the Agency alleged as the bases for termination that:

A. The parents, by conduct continuing for a period of at least six months immediately preceding the filing of the petition, either have evidenced a settled purpose of relinquishing parental claim to the child or have refused or failed to perform parental duties (Section 2511 (a) (1)).

B. The repeated and continued incapacity, abuse, neglect, or refusal of the parents has caused the child to be without essential parental care, control, or subsistence necessary for his physical and mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by said parents. (Section 2511 (a) (2)).

C. The child has been removed from the care of the parents by the Court for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parents cannot or will not remedy these conditions within a reasonable period of time, the services or assistance reasonably available to the parents 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 parental rights would best serve the needs and welfare of the child. (Section 2511 (a) (5)).

D. The child has been removed from the care of the parents by the Court or under a voluntary agreement with an agency, twelve 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. (Section 2511 (a) (8)).

FINDINGS OF FACT

Background Facts

1. K.P.-B. was born December 17, 2006, in Philadelphia, Pennsylvania. (Petition to Terminate Parental Rights)

2. K.P.-B. was originally placed in the physical custody of the Agency on April 13, 2007. (N.T. 05/30/13 at page 63)

3. The Agency was granted legal custody of K.P.-B. by Order of Court on May 24, 2007. (N.T. 05/30/13 at page 63)

4. In January 2007, the Agency received a referral that Mother was using illegal drugs and had an extensive drug history. (N.T. 05/30/13 at page 64)

5. At that time, Mother refused to sign releases and the Agency could not obtain information from Mother's providers to

determine if she was receiving treatment for her drug use. (N.T. 05/30/13 at page 64)

6. In April 2007, Mother refused to cooperate with the Agency, she continued to use illegal drugs, and her children were not attending school.¹ (N.T. 05/30/13 at page 65)

7. The Child was placed in the custody of the Agency on April 16, 2007. (N.T. 05/30/13 at page 65)

8. Physical and legal custody of K.P.-B. was returned to Mother on March 4, 2008, as she had completed her objectives contained in the child's permanency plan then in effect. (N.T. 05/30/13 at page 63)

9. During the years 2009-2010, the Agency continued to receive referrals regarding Mother's drug use, lack of supervision of the Child, truancy, and lack of basic needs being met for the Child. (N.T. 05/30/13 at page 65)

10. At that time, Mother acknowledged to the Agency she was using cocaine. (N.T. 05/30/13 at page 65)

11. On October 13, 2010, the Agency was advised that the Manheim Township Police and the Lancaster City Police had executed a search warrant for Mother's home and found a stolen firearm and a large sum of money. (N.T. 05/30/13 at page 66)

¹ At that time, besides the Child, Mother had two school age children in her custody, Krysta and Muhammad. (N.T. 05/30/13 at pages 65-66)

12. At that time, Mother had custody of K.P.-B. and his half-brother, Muhammad. (N.T. 05/30/13 at page 66)

13. The police also found marijuana, cocaine, and evidence of drug use in her home. (N.T. 05/30/13 at page 66)

14. Mother admitted to prostitution and was subsequently charged with prostitution and theft. (N.T. 05/30/13 at page 66)

15. It was reported to the police that Mother's older son, Kristopher Byes, was on his way to pick up K.P.-B. and Muhammad. (N.T. 05/30/13 at page 66)

16. On October 18, 2010, the Agency learned that Mr. Byes only kept the Child and his half-brother overnight and that they were again in the care of Mother. (N.T. 05/30/13 at page 66)

17. Mother reported to the Agency on October 19, 2010, that she was having mental health issues and had relapsed on drugs. (N.T. 05/30/13 at page 66)

18. At that time, Mother refused to submit to a drug screen. (N.T. 05/30/13 at page 67)

19. The Agency then advised Mother that she would need an adult family member to supervise her and the children. (N.T. 05/30/13 at page 67)

20. Mother's sister was cleared as an approved supervisor. (N.T. 05/30/13 at page 67)

21. Mother's sister was unable to provide the necessary supervision because Mother refused her assistance. (N.T. 05/30/13 at page 67)

22. The Agency was unable to make contact with Mother on October 20 and 21, 2010. (N.T. 05/30/13 at page 67)

23. On October 21, 2010, the Agency received a phone call from Mother during which her speech was slurred and her thought processes were incoherent. (N.T. 05/30/13 at page 67)

24. Mother showed up at the Agency later on October 21, 2010, and had K.P.-B. with her. She stayed in the parking lot and was screaming and angry. (N.T. 05/30/13 at pages 67-68)

25. Mother sped out of the parking lot and almost hit several cars. (N.T. 05/30/13 at page 68)

26. The Manheim Township Police were called to assist in finding the Child and his half-brother, but they were not successful. (N.T. 05/30/13 at page 68)

27. On October 22, 2010, the Child and his half-brother were found and were placed into foster care. (N.T. 05/30/13 at page 68)

28. By Order of Court dated December 30, 2010, the Agency obtained legal custody of K.P.-B. when the Court found him to be a dependent child. (N.T. 05/30/13 at page 68)

29. The Court approved a child permanency plan with the goal of reunification with the Child's parents. (N.T. 05/30/13 at page 68)

30. K.P.-B. has remained in the legal custody of the Agency from December 30, 2010, and has been in the physical custody of the Agency since October 22, 2010. (N. T. 05/30/13 at page 64)

31. For one year prior to the hearing date of May 30, 2013, Mother contacted the Agency only twice, by telephone in both instances. (N.T. 05/30/13 at page 73)

Mental Health Functioning Objective

32. It was reported to the Agency that Mother had a psychiatric evaluation done on October 6, 2011, at WEDGE Recovery Center in Philadelphia. (N.T. 05/30/13 at page 68)

33. The Agency did not receive a copy of the evaluation, although it was requested. (N.T. 05/30/13 at page 69)

34. The Agency received documentation that Mother was participating in intensive outpatient therapy through WEDGE Recovery Center. (N.T. 05/30/13 at page 69)

35. Mother began the therapy on September 23, 2011, but no further information was received by the Agency in respect to Mother's therapy. (N.T. 05/30/13 at page 69)

36. The Agency requested that Mother sign a release enabling the WEDGE Center to provide information regarding Mother's progress to the Agency, but Mother had not done so by

the time of the May 30, 2013, hearing. (N.T. 05/30/13 at page 69)

37. It was reported that Mother had been working with an intensive case manager through the Behavioral Health Special Initiative in Philadelphia. (N.T. 05/30/13 at page 69)

38. As of the May 30, 2013, hearing, it was unknown whether Mother was continuing to receive services through the Behavioral Health Special Initiative. (N.T. 05/30/13 at page 69)

39. Mother was incarcerated and was released on November 29, 2012. (N.T. 05/30/13 at page 71)

40. Since her release from prison, Mother failed to maintain consistent contact with the Agency. (N.T. 05/30/13 at page 72)

41. As there is no further verification regarding Mother's mental health treatment, Mother's mental health objective remained incomplete as of the May 30, 2013, hearing. (N.T. 05/30/13 at pages 69-70)

Remain Free from Drugs and Misuse of Alcohol Objective

42. Mother checked into Girard Medical Center on June 9, 2011, and remained in its inpatient program until July 5, 2011. (N.T. 05/30/13 at page 70)

43. On June 17, 2012, while Mother was an inpatient at Girard Medical Center, Mother had a psychological consultation. (N.T. 05/30/13 at page 70)

44. On July 5, 2011, Mother was accepted into the Libertae Halfway House. (N.T. 05/30/13 at page 70)

45. It was reported to the Agency that Mother addressed her addiction issues while she was at Libertae. (N.T. 05/30/13 at page 70)

46. On September 23, 2011, Mother left the program against the providers's advice. (N.T. 05/30/13 at page 70)

47. Mother reported to the Agency that she next would be going to another halfway house known as Everything Must Change; however, Mother never provided any verification that she had moved there. (N.T. 05/30/13 at page 70)

48. Mother was working with an intensive case manager through the WEDGE Recovery Center; however, Mother failed to execute releases. The Agency could not confirm if any treatment was provided to Mother. (N.T. 05/30/13 at page 70)

49. In November, 2012, it was reported that Mother was participating in a drug and alcohol program called Conewago Place, located in Hummelstown, Pennsylvania. (N.T. 05/30/13 at page 71)

50. On May 21, 2013, the Agency confirmed that Mother completed the program at Gaudenzia Washington House and that Mother had returned home. (N.T. 05/30/13 at page 71)

51. Mother failed to provide her home address to the Agency. (N.T. 05/30/13 at page 71)

52. While at Gaudenzia Washington House, Mother remained drug-free and was moderately compliant with the program. (N.T. 05/30/13 at page 71)

Remain Crime-Free Objective

53. On August 10, 2011, Mother's case manager at Libertae reported that Mother was incarcerated for unpaid fines. (N.T. 05/30/13 at pages 71-72)

54. Mother bailed herself out on August 12, 2011. (N.T. 05/30/13 at pages 71-72)

55. On September 20, 2011, it was reported to the Agency that Mother was not complying with her probation requirements. (N.T. 05/30/13 at page 72)

56. Mother was incarcerated on September 21, 2012, for a probation violation. (N.T. 05/30/13 at page 72)

57. Mother was released on November 29, 2012. (N.T. 05/30/13 at page 72)

58. Mother fails to maintain contact with the Agency. (N.T. 05/30/13 at page 72)

59. It was unknown as of the May 30, 2013, hearing whether Mother then remained on probation, or, if she was still on probation, whether she was compliant with the requirements of her probation. (N.T. 05/30/13 at page 72)

60. As of the May 30, 2013, hearing, Mother had not disclosed her then current address to the Agency, and the Agency did not know where Mother resided. (N.T. 05/30/13 at page 72)

Parenting Skills Objective

61. At the time of the May 30, 2013, hearing, Mother had not received a recommendation from a mental health or drug and alcohol provider that would enable the Agency to make a referral for Mother to begin parenting classes. (N.T. 05/30/13 at page 73)

62. Because the Agency received no recommendation, no referral was made by the Agency for parenting classes. (N.T. 05/30/13 at page 73)

63. Mother participated in a parenting class while she was a resident at the Libertae Halfway House. (N.T. 05/30/13 at page 73)

64. The Agency could not approve this parenting class because Mother left Libertae against the providers's recommendation. (N.T. 05/30/13 at page 73)

65. No other information exists with regard to Mother attending parenting classes. (N.T. 05/30/13 at page 73)

Financial Stability Objective

66. As of the May 30, 2013, hearing, Mother had not provided any financial documentation to the Agency (except the

documentation mentioned in the next finding). (N.T. 05/30/13 at page 73)

67. On May 16, 2013, Mother provided the Agency with a copy of a Supplemental Security Income ("SSI") statement indicating benefits received by Mother. (N.T. 05/30/13 at pages 73-74)

68. As of January 1, 2013, Mother began receiving \$710.00 monthly in SSI benefits. (N.T. 05/30/13 at page 74)

69. Mother received one SSI payment of \$1,360.00 due to the retroactivity of her benefits. (N.T. 05/30/13 at page 74)

70. As of the May 30, 2013, hearing, the Agency did not know where or with whom Mother was living. (N.T. 05/30/13 at page 74)

Commitment Objective

71. K.P.-B. was placed in the custody of the Agency on October 22, 2010. (N.T. 05/30/13 at page 75)

72. Mother made only two visits with the Child, specifically, the visits arranged on October 20, 2011, and December 29, 2011. (N.T. 05/30/13 at page 75)

73. Visitation between Mother and K.P.-B. was suspended by the Court on June 7, 2012. (N.T. 05/30/13 at page 75)

74. Mother did not ask to have her visits reinstated until the termination of parental rights hearing on May 30, 2013. (N.T. 05/30/13 at page 103)

75. Mother has phone contact with K.P.-B. (N.T. 05/30/13 at page 75)

76. At times K.P.-B. refuses to speak to Mother on the telephone. (N.T. 05/30/13 at page 75)

77. There have been occasions when, after he spoke to Mother, K.P.-B. was emotionally out of control and displayed aggressive behaviors. (N.T. 05/30/13 at pages 75, 102)

78. K.P.-B. has not had a consistent female parent figure in his life. (N.T. 05/30/13 at page 14)

Child's Placement

79. K.P.-B. is currently in a foster home that is a permanent resource for him and for his half-brother, Muhammad. (N.T. 05/30/13 at pages 82-83)

80. K.P.-B. has been in his present placement since February 2012. (N.T. 05/30/13 at pages 82-83)

81. K.P.-B.'s half-brother, Muhammad, resides in the same foster home as K.P.-B. (N.T. 05/30/13 at pages 82-83)

82. The permanency goal for K.P.-B.'s half-brother is another planned living arrangement intended to be permanent in nature. (N.T. 05/30/13 at page 84)

83. K.P.-B. is very close to his half-brother. (N.T. 05/30/13 at page 84)

84. K.P.-B. is very affectionate with his foster mother and foster father. (N.T. 05/30/13 at page 85)

Best Interests Analysis

85. K.P.-B.'s half-brother has been with him through more than one foster placement and is his primary emotional attachment. (N.T. 05/30/13 at page 14)

86. K.P.-B. has a very strong attachment to his half-brother, Muhammad, who has been the most consistent care giver for him throughout his life. (N.T. 05/30/13 at page 10)

87. K.P.-B.'s half-brother will be the foundation for K.P.-B.'s growth and development. (N.T. 05/30/13 at page 10)

88. K.P.-B.'s sense of security would be at risk if K.P.-B. was to be separated from his half-brother. (N.T. 05/30/13 at pages 10-11)

89. The current foster parents are committed to both K.P.-B. and his half-brother. (N.T. 05/30/13 at page 14)

90. K.P.-B. is forming a secure attachment with his foster parents. (N.T. 05/30/13 at page 54)

91. K.P.-B. has been in placement with the Agency for three years during which time Mother had two visits with the Child. (N.T. 05/30/13 at pages 68, 75)

92. K.P.-B. is receiving outpatient therapy as a result of his defiant and aggressive behavior. (N.T. 05/30/13 at pages 83-84)

93. Mother failed to appear for the second hearing date in respect to the Agency's petition to terminate parental rights on August 1, 2013. (N.T. 08/01/13 at pages 4, 31)

CONCLUSIONS OF LAW

1. There is clear and convincing evidence that:

(a) the repeated and continued incapacity of Mother has caused the Child to be without essential parental care, control or subsistence necessary for his physical or mental well-being;

(b) the conditions and causes of the incapacity cannot or will not be remedied by Mother.

2. There is clear and convincing evidence that:

(a) the Child has been removed from the care of Mother for a period of at least six months;

(b) the conditions which led to the removal of the Child continue to exist;

(c) Mother cannot or will not remedy these conditions within a reasonable period of time;

(d) the services or assistance reasonably available to Mother is not likely to remedy the conditions which led to the removal of the Child within a reasonable period of time; and

(e) termination of Mother's parental rights would best serve the needs and welfare of the Child.

3. There is clear and convincing evidence that:
- (a) the Child has been removed from the care of Mother by the Court;
 - (b) twelve months or more had elapsed from the date of removal;
 - (c) the conditions which led to the removal of the Child continue to exist; and,
 - (d) termination of Mother's parental rights would best serve the needs and welfare of the Child.

4. There is clear and convincing evidence that the termination of Mother's parental rights will best serve the developmental, physical, and emotional needs and welfare of the Child because the Child is in need of a nurturing, loving and a stable home environment, which Mother failed to provide.

DISCUSSION

The Superior Court, in its opinion issued in the case of *In Re K.M.*, 53 A.3d 781, 2012 Pa.Super. 160, provided a comprehensive statement of its approach to the review of an order terminating parental rights, which is in accordance with the following standards:

"When reviewing an appeal from a decree terminating parental rights, we are limited to determining whether the decision of the trial court is supported by competent evidence. Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the

decree must stand. Where a trial court has granted a petition to involuntarily terminate parental rights, this Court must accord the hearing judge's decision the same deference that we would give to a jury verdict. We must employ a broad, comprehensive review of the record in order to determine whether the trial court's decision is supported by competent evidence.

In re R.N.J., 985 A.2d 273, 276 (Pa.Super. 2009) (quoting *In re S.H.*, 879 A.2d 802, 805 (Pa.Super. 2005)). The burden is upon the petitioner to prove by clear and convincing evidence that its asserted grounds for seeking the termination of parental rights are valid. *Id.* 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. & J.R.C.*, 837 A.2d 1247, 1251 (Pa.Super. 2003)). The trial court is free to believe all, part, or none of the evidence presented and is likewise free to make all credibility determinations and resolve conflicts in the evidence. *In re M.G.*, 855 A.2d 68, 73-74 (Pa.Super. 2004). If competent evidence supports the trial court's findings, we will affirm even if the record could also support an opposite result. *In re Adoption of T.B.B.*, 835 A.2d 387, 394 (Pa.Super. 2003). This Court may affirm the trial court's 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)."
Id., at 785-786.

In the present case, the Agency filed for termination on four distinct statutory grounds, three of which were proven as to Mother by clear and convincing evidence. Specifically, the Agency met its burden in respect to proving grounds for the termination of Mother's parental rights under 23 Pa.C.S.A. § 2511 (a) (2), (5), and (8). It is this Court's conclusion that the Agency did not meet its burden of proof in respect to 23

Pa.C.S.A. § 2511 (a) (1), where the basis for termination may be summarized as parental abandonment of a child.

Grounds for Termination under 23 Pa.C.S.A. § 2511 (a) (2)

The basis for termination of parental rights under 23 Pa. C.S.A. § 2511 (a) (2) is, in summary, the incapacity of, or refusal by, the parent to correct the conditions which led to the placement.

K.P.-B. is approaching seven years of age. Initially, he was placed in the custody of the Agency approximately four months after his birth. Custody of the Child was returned to Mother on March 4, 2008, and continued until October 22, 2010. More than three years have elapsed since the Child's second placement into the custody of the Agency. The Child has spent most of his life in foster care. (See *Findings of Fact* 1-2, 7, 27, and 30) Further, during the time in 2009 through 2010 while Mother had custody of K.P.-B. and he was just two to three years of age, Mother was using cocaine, failed to provide proper supervision, and did not provide basic needs for the Child. (See *Findings of Fact* 9 and 10) This period of custodial time that the Child spent with Mother was hardly a healthy environment and was fraught with instability for the Child. Mother's custody ended soon after Mother sped out of control from the Agency parking lot with K.P.-B. in her car with her. The Agency needed police

assistance to locate the Child and to take him into care. (See *Findings of Fact 23-27*)

The Agency has proved by clear and convincing evidence that the Child has been without essential parental care, control or subsistence necessary for his physical or mental well-being. As noted *supra*, Mother has been, and remains, unable to provide essential parental care, control or subsistence for K.P.-B. The only objective Mother completed on the child's permanency plan effective throughout the Child's second placement was to remain free of drugs and misuse of alcohol, although it was completed some nine months after Mother was served with the Agency's petition for termination of parental rights was filed. (See *Finding of Fact 50*) All of the other objectives set for Mother remain incomplete. It is also significant that throughout the history of this case, Mother has failed to cooperate with the Agency, has dropped out of contact with the Agency for extended periods of time, and has been reluctant to provide releases and information easily accessible to her to the Agency. (See *Findings of Fact 31, 36, and 48*) Of greatest significance is the minimal efforts Mother made to maintain contact with the Child. At the same time, the Agency continuously extended efforts to provide the services to Mother necessary for her to successfully meet the child's permanency plan objectives. Mother has demonstrated an inability to remedy the conditions and causes of

her failure to provide for the Child's needs for a period exceeding three years.

Grounds for Termination under 23 Pa. C.S.A. § 2511 (a) (5)

The hallmarks of grounds for termination of parental rights under 23 Pa. C.S.A. § 2511 (a) (5) are that the subject child has been in placement for at least six months, the conditions which led to the placement continue to exist, that offered services are unlikely to alleviate such conditions within a reasonable time, and the subject child's needs and welfare are best served by termination.

The Agency proved by clear and convincing evidence that K.P.-B. has been removed from the care of Mother for at least six months. Mother has not completed a parenting class. A review of the history of this case indicates that after the first placement where the Child was released to the care of Mother because she had completed the child's permanency plan in effect at that time, Mother failed to provide adequate supervision. And now, after the Child has spent an additional three years in placement, Mother still has not completed a parenting class. (See *Findings of Fact* 61-64) The Agency does not know where or with whom Mother is residing. (See *Finding of Fact* 70) Any commitment she may have to the Child, if any, is of a detrimental nature. (See *Findings of Fact* 76-78)

All of the factors discussed above in respect to 23 Pa. C.S.A. § 2511 (a) (2) are applicable under 23 Pa. C.S.A. § 2511 (a) (5). Substantial services have been offered to Mother by the Agency, and more than a reasonable period of time has elapsed while the initial conditions which led to the Child's placement substantially persist.

The additional factor the Court must determine under 23 Pa. C.S.A. § 2511 (a) (5) is whether "termination of parental rights would best serve the needs and welfare of the child." This factor is essentially subsumed in the Court's consideration of the application of 23 Pa. C.S.A. § 2511 (b), which is discussed below.

The Agency proved by clear and convincing evidence that the conditions which led to the removal of the Child continue to exist. This Child needs permanency. Mother is unable to remedy the conditions which led to the removal of the Child. Despite the passage of three years, Mother has not completed her child's permanency plan objectives. She has failed to maintain contact with the Agency. Her neglect even extended to her failure to appear at the August 1, 2013, final session of the termination of parental rights hearing. (See *Finding of Fact* 58, 60, and 90) The services provided to her by the Agency were an attempt to remedy the conditions which led to placement of the Child. More

than a reasonable period of time has passed and those conditions still exist which necessitated placement originally.

Grounds for Termination under 23 Pa. C.S.A. § 2511 (a) (8)

The grounds for termination of parental rights under 23 Pa. C.S.A. § 2511 (a) (8) are similar to the grounds established under 23 Pa. C.S.A. § 2511 (a) (5). However, under subsection (a) (8), the Agency need not prove incapacity or refusal by the parent, nor need it prove the absence of a likelihood that the services or assistance reasonably available to the parents will prove successful. Rather, the emphasis moves to the length of the lapse of time (from six months to twelve months), requiring that if the conditions which led to placement persist one year or more after placement, then termination should occur unless the needs and welfare of the subject child suggest a contrary result.

The Agency proved by clear and convincing evidence that K.P.-B. has been removed from the care of Mother and more than twelve months have elapsed from the date of removal. Many of the factors discussed above in respect to 23 Pa. C.S.A. § (a) (2) and (5) are applicable to 23 Pa. C.S.A. § 2511 (a) (8) and will not be repeated. Again, Mother has not completed her objectives contained in the child's permanency plan. The Court cannot consider her objective to remain free of drugs and misuse of

alcohol to be completed. (See *Finding of Fact 50*)² There is no reason to believe that Mother is capable of good parenting. The location of her residence and with whom she may be residing remain unknown to the Agency. It would be tragic for the Child if a second reunification with Mother was attempted and a second failure occurred. The ineluctable conclusion as to why K.P.-B. displays aggressive and defiant behaviors, which necessitate therapy, are ineluctably related to the unstable and turbulent time he spent with Mother during 2008-2010 which was capped with his separation from her to protect his safety. (See *Findings of Fact 17, and 22-27*)

As it was with the analysis under 23 Pa. C.S.A. § 2511 (a) (5), the additional factor the Court must determine under 23 Pa. C.S.A. 2511 (a) (8) is whether "termination of parental rights would best serve the needs and welfare of the child." Again, this factor is essentially subsumed in the Court's consideration of the application of 23 Pa. C.S.A. § 2511 (b), as discussed below.

"Primary Considerations" Required by 23 Pa. C.S.A. § 2511 (b)

Supervening all of the other statutory considerations is the determination that the Court must make as to whether terminating

² 23 Pa. C.S.A. § 2511(b) **Other considerations**...With respect to any petition filed pursuant to subsection (a)...(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.

Mother's parental rights to the Child will best serve the developmental, physical, and emotional needs and welfare of the child. The governing statute mandates that these concerns shall receive "primary consideration". 23 Pa. C.S.A. § 2511 (b)

"Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child." *In re Adoption of T.B.B.*, 835 A.2d 387, 397 (Pa.Super. 2003). An examination of the parent-child bond is required, where the Court must assess the effect upon the child of severing that bond. See *In re K.K.R.-S.*, 958 A.2d 529, 533 (Pa.Super. 2008). Instantly, no bonding assessment was requested by Mother and that is not a requirement. The orphans' court is not required by statute or precedent to order a formal bonding evaluation by an expert. *Id.* at 533 The orphans' court is permitted to rely upon the observations and evaluations of social workers when assessing a parent/child bond. *In re Z.P.*, 994 A.2d 1108, 1121 (Pa.Super. 2010).

Further, to state the obvious, where Mother's contact with the Child over the past three years has been limited to two in person visits and sporadic telephone calls, no bonding assessment is necessary to support the conclusion that if any bond exists between Mother and the Child, it is minimal, and severing such a bond would be of nominal consequence to the Child even if the bond was a positive one. (See *Findings of Fact* 72, 76-78) But in

the circumstances of this case, there is good reason to conclude that any bond which may exist could not be healthy for the Child, as his life was characterized by neglect and turmoil during the relatively short time he lived in Mother's care.

The Federal Adoption and Safe Families Act (found at 42 U.S.C. §§ 620 through 679) requires that a child must achieve permanency within a reasonable period of time.

Placement of and custody issues pertaining to dependent children are controlled by the Juvenile Act, which was amended in 1998 to conform to the Federal Adoption and Safe Families Act (ASFA)...The policy underlying these statutes is to prevent children from languishing indefinitely in foster care, with its inherent lack of permanency, normalcy, and long-term parental commitment. Consistent with this underlying policy, the 1998 amendments... place the focus of dependency proceedings, including change of goal proceedings on the child. Safety, permanency, and well-being of the child must take precedence over all other considerations, including the rights of parents. *In re N.C.*, 909 A. 2d 818, 823 (Pa. Super. 2006)

K.P.-B. needs, and is deserving of, permanency and stability in his life. The Child cannot rely on Mother to fulfill these critical needs.

On the other hand, K.P.-B. has a very strong attachment to his half-brother, Muhammad, who has been the most consistent care giver for him and who resides with the Child in the same resource home. (See *Findings of Fact* 83-88) K.P.-B.'s foster parents are desirous of adopting him and also have a commitment to his half-brother. The resource home household members collectively provide to the Child with the foundation the Child needs and

deserves to develop secure attachments and to develop the ability to trust and rely on loved ones.

All of these considerations lead to the inescapable conclusion that the Child's interests are best served by the termination of Mother's parental rights, thereby clearing the way for the Child's adoption into a family where he now enjoys the mutual affection of his foster, and likely permanent, parents and his brother.

CONCLUSION

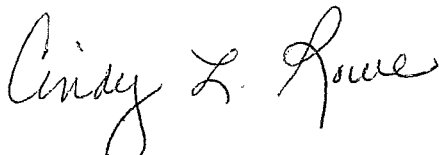
The issues raised by Mother in her Notice of Appeal lack merit. The Decree entered on October 7, 2013, terminating Mother's parental rights in respect K.P.-B. should be affirmed.

BY THE COURT:



JEFFREY J. REICH, JUDGE

Dated: December 5, 2013

Attest: 
DEPUTY CLERK - CCD

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IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

IN RE:

K [REDACTED] P [REDACTED] B [REDACTED]

INVOLUNTARY TERMINATION

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No. 1265 of 2012

OPINION SUR APPEAL

This opinion is written in response to an appeal from this Court's issuance of a decree which involuntarily terminated the parental rights of E [REDACTED] B [REDACTED] as birth parent of K [REDACTED] P [REDACTED] B [REDACTED] (hereinafter referred to as "K.P.-B." or as the "Child").

The Lancaster County Children and Youth Social Service Agency (hereinafter, the "Agency") filed a Petition to Terminate Parental Rights on June 7, 2012.

Earnel Butler (hereinafter, "Father") was served with the Agency's petition by certified mail received by Father on June 20, 2012.

The biological mother of K.P.-B. is K [REDACTED] R [REDACTED] P [REDACTED] (hereinafter, "Mother"). Her parental rights were involuntarily terminated by decree dated October 7, 2013. Mother is not a party to this appeal.¹

¹ Mother subsequently filed a Notice of Appeal on November 5, 2013. That Opinion Sur Appeal is due December 5, 2013, and will be submitted separately.

Hearings to address the issue of whether Father's parental rights should be terminated were conducted on May 30, 2013, and August 1, 2013. The termination hearings were delayed due to Father's request for the scheduling and completion of the bonding assessment.

The Court's decree terminating Father's parental rights was signed on October 7, 2013. Father filed a timely notice of appeal on October 24, 2013.

PROCEDURAL HISTORY

The Agency originally filed for custody of the Child on April 16, 2007. At that time, Mother had custody of the Child. An Order of Adjudication was issued on April 19, 2007, finding K.P.-B. to be dependent. The issue at the time was Mother's inability to care for K.P.-B. Subsequently, a Disposition Order was entered May 24, 2007, which approved a child's permanency plan. Father was present for this hearing. By Order dated March 4, 2008, physical and legal custody of K.P.-B. was released to Mother.

A Petition for Temporary Custody of the Child was filed by the Agency on October 22, 2010. At the time of the October 22, 2010, filing, K.P.-B. was again in Mother's custody. The petition indicated that the Agency did not then know Father's whereabouts. A Shelter Care Order was issued November 15, 2010, which continued K.P.-B. in the care of the Agency. Father

appeared for the hearing, but he was excused due to illness. An Order of Adjudication and Disposition-Child Dependent was issued December 30, 2010, which approved a child's permanency plan with a primary goal of reunification with the parents. Thereafter, review hearings were conducted periodically.

The objectives for Father as outlined in the child's permanency plans in effect from the December 30, 2010, disposition are: (1) to learn and use good parenting skills; (2) to remain free of domestic violence; (3) to be financially stable in order to provide for himself and his child; (4) to obtain and maintain a home free and clear of hazards for himself and his child; (5) to maintain an ongoing commitment to his child. (See Petition for Permanency Hearing dated June 26, 2013)

In its Petition to Terminate Parental Rights, the Agency alleged as the bases for termination that:

A. The parents, by conduct continuing for a period of at least six months immediately preceding the filing of the petition, either have evidenced a settled purpose of relinquishing parental claim to the child or have refused or failed to perform parental duties. (Section 2511 (a) (1)).

B. The repeated and continued incapacity, abuse, neglect, or refusal of the parents has caused the child to be without essential parental care, control, or subsistence necessary for his physical and mental well-being and the conditions and causes

of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parents. (Section 2511 (a) (2)).

C. The child has been removed from the care of the parents by the Court for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parents cannot or will not remedy these conditions within a reasonable period of time, the services or assistance reasonably available to the parents 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 parental rights would best serve the needs and welfare of the child. (Section 2511 (a) (5)).

D. The child has been removed from the care of the parents by the Court or under a voluntary agreement with an agency, twelve 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. (Section 2511 (a) (8)).

FINDINGS OF FACT

Background Facts

1. K.P.-B. was born December 17, 2006, in Philadelphia, Pennsylvania. (Petition to Terminate Parental Rights)

2. K.P.-B. was originally placed in the physical custody of the Agency on April 13, 2007. (N.T. 05/30/13 at page 63)

3. The Agency was granted legal custody of K.P.-B. by Order of Court on May 24, 2007. (N.T. 05/30/13 at page 63)

4. Father was involved with the Agency during the Child's first placement in 2007. (Child's Permanency Plan dated 11/04/10)

5. At that time, Father worked on a child's permanency plan but did not complete his violence-free objective, his housing objective, or his income objective. (Child's Permanency Plan dated 11/04/10)

6. Physical and legal custody of K.P.-B. was returned to Mother on March 4, 2008, as she had completed her child's permanency plan objectives. (N.T. 05/30/13 at page 63)

7. The Agency was granted physical custody of K.P.-B. on October 22, 2010. (N.T. 05/30/13 at page 63)

8. The Agency obtained legal custody of K.P.-B. by Order of Court dated December 30, 2010. (N.T. 05/30/13 at page 63)

9. K.P.-B. has remained in the legal custody of the Agency from December 30, 2010, and has been in the physical custody of the Agency since October 22, 2010. (N.T. 05/30/13 at page 64)

10. The original placement of K.P.-B. was due to Mother's drug use and her inability to provide housing. (N.T. 05/30/13 at pages 64-65)

11. Physical and legal custody of K.P.-B. was released to Mother on March 4, 2008, because she had completed the objectives for her contained in the child's permanency plan. (N.T. 05/30/13 at page 65)

12. During the years 2009 and 2010, K.P.-B. continued in the custody of Mother. (N.T. 05/30/13 at page 65)

13. During those same years (2009 and 2010), the Agency received multiple referrals regarding Mother's drug use and lack of supervision for the child. (N.T. 05/30/13 at page 65)

14. K.P.-B. was again adjudicated a dependent child on December 30, 2010, and he was placed in the care of the Agency due to Mother's continued drug use and failure to provide for the child. (N.T. 05/30/13 at pages 67-68)

15. As of the Child's second adjudication as a dependent child (on December 30, 2010), Father was not involved in K.P.-B.'s life. (N.T. 05/30/13 at pages 67-68)

16. Father has never had custody of K.P.-B. (N.T. 08/01/13 at pages 47-48)

17. Father presently suffers from gout, diabetes, high blood pressure, and high cholesterol. (N.T. 08/01/13 at pages 56-57)

Parenting Skills Objective

18. Father began the Parent/Child Learning program on March 29, 2011, and completed it on July 9, 2011. (N.T. 05/30/13 at page 76)

19. Despite his completion of the parenting program, Father is unable to implement parenting skills when he is engaged with K.P.-B. (N.T. 05/30/13 at page 76)

20. If K.P.-B. misbehaves, Father raises his voice and uses a condescending tone in an attempt to stop the misbehavior. (N.T. 05/30/13 at page 76)

21. Because Father cannot properly redirect K.P.-B., the Child responds with fear, withdrawal, or removes himself from Father's presence. (N.T. 05/30/13 at page 76)

Domestic Violence Objective

22. At the time of K.P.-B.'s placement on October 22, 2010, a Protection from Abuse Order was in effect protecting Mother from Father.² (N.T. 05/30/13 at page 76)

23. The Protection from Abuse Order expired on December 17, 2010. (N.T. 05/30/13 at page 76)

24. Father received a domestic violence evaluation at Triad Treatment Specialists on August 11, 2011. (N.T. 05/30/13 at page 77)

² The PFA action is docketed to No. CI 07-11323, in the Court of Common Pleas of Lancaster County, Pennsylvania.

25. As a result of the domestic violence evaluation, ongoing therapy was recommended, which Father began on November 30, 2011, at Pennsylvania Counseling Services. (N.T. 05/30/13 at page 77)

26. Due to Father's inconsistent attendance and because Father's assigned therapist left the practice, Father was unsuccessfully discharged from therapy on July 25, 2012. (N.T. 05/30/13 at page 77)

27. Father later resumed counseling (this time with HSA Associates), but not until two months after Father was served with the Agency's petition to terminate parental rights. (N.T. 05/30/13 at page 77)

28. As of the first hearing on the Agency's petition to terminate parental rights, Father was continuing to regularly attend ongoing therapy and the therapist indicated that Father was making progress. (N.T. 05/30/13 at page 77)

29. However, Father's therapist has not disclosed to the Agency the details of Father's treatment plan. (N.T. 05/30/13 at pages 77)

30. Father's therapist indicated Father is working on anger management, but the Agency is not informed in respect to the status of Father's progress in this respect. (N.T. 05/30/13 at page 77)

Financial Stability Objective

31. Father works part-time at the Lancaster Host Resort. At the time of the May 30, 2013 hearing, Father was receiving unemployment compensation in the amount of \$160.00 bi-weekly. (N.T. 05/30/13 at page 78)

32. Father was unable to work for several months due to emergency surgery. (N.T. 05/30/13 at page 78)

33. As of the hearing on May 30, 2013, no verification had been received by the Agency regarding Father's income since August 3, 2012. (N.T. 05/30/13 at page 78)

34. Father's income is inconsistent and jeopardizes his ability to provide for K.P.-B.'s needs. (N.T. 05/30/13 at page 78)

35. As of the hearing on May 30, 2013, Father was in the process of applying for Supplemental Security Income. (N.T. 05/30/13 at page 78)

36. Other than at the hearing on August 1, 2013, Father provided to his caseworker just six pay stubs in 2011, one pay stub in 2012, and two pay stubs in 2013. (N.T. 08/01/13 at page 10)

37. Father's most recent pay stub for work performed prior to the August 1, 2013, hearing indicated bi-weekly earnings of just \$194.00. (N.T. 08/01/13 at page 10)

Safe Home Objective

38. Until October 31, 2012 (some four months after Father was served with the Agency's petition to terminate his parental rights), Father lived in a one bedroom efficiency apartment. (N.T. 05/30/13 at page 78)

39. Father then moved into the Transitional Living Center (hereinafter, "TLC") on October 31, 2012. (N.T. 05/30/13 at pages 78-79)

40. Father's space at TLC consists of one room with two beds. (N.T. 05/30/13 at page 79)

41. The TLC room is appropriate housing for K.P.-B. and Father. (N.T. 05/30/13 at page 79)

42. Father is compliant with TLC's program requirements. (N.T. 05/30/13 at page 79)

43. Father completed his safe housing objective four months after he was served with the Agency's petition for termination of parental rights. (N.T. 05/30/13 at page 80)

44. Father provided his caseworker with just one rent receipt in 2012 and one rent receipt for 2013 before the August 1, 2013, hearing. (N.T. 08/01/13 at page 8)

45. At the hearing on August 1, 2013, Father provided five more monthly rent receipts. (N.T. 08/01/13 at page 8)

Commitment Objective

46. Father consistently attends monitored, bi-weekly visits with K.P.-B. (N.T. 05/30/13 at page 79)

47. At times, Father colors with K.P.-B. and assists in the Child's homework. (N.T. 05/30/13 at page 79)

48. At times, Father allows K.P.-B. to play on his own during visits. (N.T. 05/30/13 at page 79)

49. At times, Father sleeps during his visits with K.P.-B. (N.T. 05/30/13 at page 79)

50. Father does not consistently interact with K.P.-B. during his visits with the Child. (N.T. 05/30/13 at page 81)

51. Sometimes K.P.-B.'s older half-brother, Muhammad, is also present when Father has his visits. (N.T. 05/30/13 at pages 81-82)

52. At such times, Father will interact with Muhammad while K.P.-B. is left on his own, leading K.P.-B. to demonstrate behavior to get Father's attention. (N.T. 05/30/13 at page 82)

53. There have been instances during Father's visits when K.P.-B. will leave the visitation room to find the caseworker because Father upset him. (N.T. 05/30/13 at page 82)

The Child's Placement

54. K.P.-B. is currently in a foster home that is a permanent resource with his half-brother, Muhammad. (N.T. 05/30/13 at pages 82-83)

55. K.P.-B. has been in his present placement since February 2012. (N.T. 05/30/13 at pages 82-83)

56. K.P.-B.'s half-brother, Muhammad, resides in the same foster home as K.P.-B. (N.T. 05/30/13 at pages 82-83)

57. The permanency goal for K.P.-B.'s half-brother is another planned living arrangement intended to be permanent in nature. (N.T. 05/30/13 at page 84)

58. K.P.-B. is very close to his half-brother. (N.T. 05/30/13 at page 84)

59. K.P.-B. is very affectionate with his foster mother and foster father. (N.T. 05/30/13 at page 85)

Bonding Assessment

60. Dr. Suzanne Ail performed a bonding assessment in respect to Father and K.P.-B. (N.T. 05/30/13 at pages 4-5)

61. In the course of performing her assessment, Dr. Ail met with K.P.-B. alone, then Father alone, then K.P.-B. with Father present, and then K.P.-B. with the foster parents present. (N.T. 05/30/13 at page 6)

62. Before the meetings described in the preceding finding, Dr. Ail meets with the caseworker and reviews the child's permanency plan, copies of Court orders, and a moderate amount of background information. (N.T. 05/30/13 at pages 6-7)

63. K.P.-B. and Father have an insecure attachment. (N.T. 05/30/13 at page 8)

64. K.P.-B. loves Father and Father loves K.P.-B. (N.T. 05/30/13 at page 8)

65. With regard to Father, K.P.-B. demonstrates controlling, non-compliant, disrespectful and avoidant behavior. (N.T. 05/30/13 at pages 8-9)

66. When K.P.-B. was with Father during the bonding assessment meeting, K.P.-B. remained physically distant from Father. (N.T. 05/30/13 at page 9)

67. While playing with the doll house at Dr. Ail's session, K.P.-B. used a child figure to attack the parent figures, baiting them to get into a fight. (N.T. 05/30/13 at page 9)

68. The aggression K.P.-B. displayed while with Father can be an expression of anger and frustration on the Child's part. (N.T. 05/30/13 at page 9)

69. K.P.-B.'s aggression towards Father can also be an attempt by the Child to bait the parent by testing whether the parent is in control. (N.T. 05/30/13 at page 9)

70. During a child preparation meeting, K.P.-B. did not include Father in his "love pocket", which was defined as the place to include people who are important to him. (N.T. 05/30/13 at pages 9-10)

71. Father has been inconsistent and self-sabotaging in his attempt to have K.P.-B. returned to him. (N.T. 05/30/13 at page 10)

72. Father believes he needs help if he is to raise K.P.-B. (N.T. 05/30/13 at pages 10, 13)

73. Father is ambivalent about his ability to raise K.P.-B. (N.T. 05/30/13 at page 10)

74. Father does not have confidence that there will be a successful reunification between K.P.-B. and himself. (N.T. 05/30/13 at pages 10, 12)

75. Father never actively parented any of his children, including K.P.-B. (N.T. 05/30/13 at page 11)

76. Father hopes a romantic relationship he is pursuing will progress so that this romantic interest will help him to raise K.P.-B. (N.T. 05/30/13 at pages 11-12)

77. K.P.-B. displayed some controlling behaviors while engaged with his foster parents, but at a much reduced level than he did with his Father. (N.T. 05/30/13 at page 10)

78. K.P.-B. will not be a readily compliant child for any parent to raise. (N.T. 05/30/13 at pages 12-13)

79. K.P.-B. has a very strong attachment to his half-brother, Muhammad, who has been the most consistent care giver for him throughout his life. (N.T. 05/30/13 at page 10)

80. K.P.-B.'s half-brother will be the foundation for K.P.-B.'s growth and development. (N.T. 05/30/13 at page 10)

81. K.P.-B.'s sense of security would be at risk if K.P.-B. was to be separated from his half-brother. (N.T. 05/30/13 at pages 10-11)

82. K.P.-B.'s foster parents wish to adopt K.P.-B. (N.T. 05/30/13 at page 11)

83. K.P.-B.'s foster parents are committed to K.P.-B.'s half-brother also. (N.T. 05/30/13 at page 11)

Best Interests Analysis

84. K.P.-B. has a stronger attachment to Muhammad, his half-brother, than he does to Father. (N.T. 05/30/13 at pages 13-14)

85. K.P.-B.'s half-brother has been with him through more than one foster placement and is K.P.-B.'s primary emotional attachment. (N.T. 05/30/13 at page 14)

86. The current foster parents are committed to both K.P.-B. and his half-brother. (N.T. 05/30/13 at page 14)

87. The half-brother (14 years of age) does not wish his parental rights to be terminated but wants to remain in his foster placement until he is old enough to be emancipated and independent. (N.T. 05/30/13 at page 14)

88. A secure attachment is based on a child's belief that the parent is a consistent, emotional presence in the child's life and is always emotionally available to the child. (N.T. 05/30/13 at page 51)

89. An insecure attachment is based on a child's belief that there is no confidence that the parent will be emotionally available to the child and will provide stability to the child. (N.T. 05/30/13 at pages 51-52)

90. A child can love a parent and still maintain an insecure attachment to them. (N.T. 05/30/13 at page 52)

91. K.P.-B. has a secure attachment to his half-brother, Muhammad. (N.T. 05/30/13 at page 53)

92. K.P.-B. is forming a secure attachment with his foster parents. (N.T. 05/30/13 at page 54)

93. K.P.-B. does not have a secure attachment to Father. (N.T. 05/30/13 at page 57)

94. A child who does not have secure attachments will encode that the world is not a predictable place, and that people may not always be able to be relied upon and trusted. (N.T. 05/30/13 at page 55)

95. A child's psychological coding early in life that the child may not rely upon others profoundly affects the child's ability to approach the world in a healthy manner, and produces a psychological condition which is very difficult to correct. (N.T. 05/30/13 at page 55)

CONCLUSIONS OF LAW

1. There is clear and convincing evidence that:

(a) the repeated and continued incapacity of Father has caused the Child to be without essential parental care, control or subsistence necessary for his physical or mental well-being;

(b) the conditions and causes of the incapacity cannot or will not be remedied by Father.

2. There is clear and convincing evidence that:

(a) the Child has been removed from the care of Father for a period of at least six months;

(b) the conditions which led to the removal of the Child continue to exist;

(c) Father cannot or will not remedy these conditions within a reasonable period of time;

(d) the services or assistance reasonably available to Father is not likely to remedy the conditions which led to the removal of the Child within a reasonable period of time; and

(e) termination of Father's parental rights would best serve the needs and welfare of the Child.

3. There is clear and convincing evidence that:

(a) the Child has been removed from the care of his parents by the Court;

(b) twelve months or more had elapsed from the date of removal;

(c) the conditions which led to the removal of the Child continue to exist; and,

(d) termination of Father's parental rights would best serve the needs and welfare of the Child.

4. There is clear and convincing evidence that the termination of Father's parental rights will best serve the developmental, physical, and emotional needs and welfare of the Child because the Child is in need of a nurturing, loving and a stable home environment, which Father failed to provide.

DISCUSSION

The Superior Court, in its opinion issued in the case of *In Re K.M.*, 53 A.3d 781, 2012 Pa.Super. 160, provided a comprehensive statement of its approach to the review of an order terminating parental rights, which is in accordance with the following standards:

"When reviewing an appeal from a decree terminating parental rights, we are limited to determining whether the decision of the trial court is supported by competent evidence. Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand. Where a trial court has granted a petition to involuntarily terminate parental rights, this Court must accord the hearing judge's decision the same deference that we would give to a jury verdict. We must employ a broad, comprehensive review of the

record in order to determine whether the trial court's decision is supported by competent evidence. *In re R.N.J.*, 985 A.2d 273, 276 (Pa.Super. 2009) (quoting *In re S.H.*, 879 A.2d 802, 805 (Pa.Super. 2005)). The burden is upon the petitioner to prove by clear and convincing evidence that its asserted grounds for seeking the termination of parental rights are valid. *Id.* 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 hesitation, of the truth of the precise facts in issue."

Id. (quoting *In re J.L.C. & J.R.C.*, 837 A.2d 1247, 1251 (Pa.Super. 2003)). The trial court is free to believe all, part, or none of the evidence presented and is likewise free to make all credibility determinations and resolve conflicts in the evidence. *In re M.G.*, 855 A.2d 68, 73-74 (Pa.Super. 2004). If competent evidence supports the trial court's findings, we will affirm even if the record could also support an opposite result. *In re Adoption of T.B.B.*, 835 A.2d 387, 394 (Pa.Super. 2003). This Court may affirm the trial court's 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)."
Id., at 785-786.

In the present case, the Agency filed for termination on four distinct statutory grounds, three of which were proven as to Father by clear and convincing evidence. Specifically, the Agency met its burden in respect to proving grounds for the termination of Father's parental rights under 23 Pa.C.S.A. § 2511 (a) (2), (5), and (8). It is this Court's conclusion that the Agency did not meet its burden of proof in respect to 23 Pa.C.S.A. § 2511 (a) (1), where the basis for termination may be summarized as parental abandonment of a child.

Grounds for Termination under 23 Pa.C.S.A. § 2511 (a) (2)

The basis for termination of parental rights under 23 Pa.C.S.A. § 2511 (a) (2) is, in summary, the incapacity of, or refusal by, the parent to correct the conditions which led to the placement.

K.P.-B. is now approaching seven years of age.

K.P.-B. was first placed in the custody of the Agency approximately four months after his birth. He remained in the Agency's custody for approximately eleven months. Custody was returned to Mother on March 4, 2008, with whom the Child remained until October 22, 2010. Father was given a child's permanency plan during the Child's first placement, but Father failed to complete his plan objectives. (See *Finding of Fact 5*)

At the present time, K.P.-B. has been in the custody of the Agency for three years since his second placement (on October 22, 2010). Father was given a child's permanency plan in respect to this placement, but he has not completed the objectives set for him in the current plan.

Father has demonstrated that, while having completed a parenting class, he remains unable to implement effective parenting strategies that are positive for K.P.-B. (See *Findings of Fact 19-21*)

Father has not completed counseling in respect to the domestic violence objective of the plan. (See *Findings of Fact 25-31*)

Father's income is not steady and raises a concern that he would be able to consistently provide for K.P.-B.'s sustenance. (See *Findings of Fact 32-35*)

Father's housing, while physically adequate, by its nature is not intended to be long term. (See *Findings of Fact 40-41*)

Father is hoping that other individuals will help him to raise K.P.-B. (See *Findings of Fact 73, 77*) Father himself has acknowledged that reunification between him and K.P.-B. would not be successful, thereby confirming his continued incapacity to raise K.P.-B. despite all the services he has received over the course of K.P.-B.'s placement. Indeed, the use of the term "reunification" is inappropriate in this case, as Father has never had custody of K.P.-B. (See *Finding of Fact 16*)

There comes a point where, due to the passage of an excessive amount of time in which to address the objectives of the child's permanency plan, one must conclude that Father possesses an underlying incapacity, if not a wilful refusal, in respect to the completion of his plan. That point has been reached in this case. Father's lack of confidence in his own capacity to parent the Child is equally disturbing. The Court has seen cases where parental confidence has been misplaced and

reunification failed. Here, where Father lacks hope, the likelihood of success is diminished.

The Agency has proven by clear and convincing evidence that the Child has been without essential parental care, control or subsistence necessary for his physical or mental well-being. Father is unable to remedy the conditions and causes of his inability to provide for the Child's needs.

Grounds for Termination under 23 Pa.C.S.A. § 2511 (a) (5)

The hallmarks of grounds for termination of parental rights under 23 Pa.C.S.A. § 2511 (a) (5) are that the subject child has been in placement for at least six months, the conditions which led to placement continue to exist, that offered services are unlikely to alleviate such conditions within a reasonable time, and the subject child's needs and welfare are best served by termination.

The Agency proved by clear and convincing evidence that K.P.-B. has been removed from the care of Father for at least six months. The Child was in placement more than seventeen months by the time the Agency filed its petition to terminate parental rights. By the time of the final termination hearing (on August 1, 2013), the Child had been in placement in excess of twenty-one months.

All of the factors discussed above in respect to 23 Pa.C.S.A. § 2511 (a) (2) are applicable under 23 Pa.C.S.A. § 2511

(a) (5), and will not be repeated at length. Again, it must be stressed that K.P.-B. has never been in Father's care. (See *Finding of Fact 16*)

Suffice it to say that substantial services have been offered to Father by the Agency, and that more than a reasonable time has elapsed while the initial conditions which led to the Child's placement substantially persist.

The additional factor the Court must determine under 23 Pa.C.S.A. § 2511 (a) (5) is whether "termination of parental rights would best serve the needs and welfare of the child." This factor is essentially subsumed in the Court's consideration of the application of 23 Pa. C.S.A. § 2511 (b), which is discussed below.

Grounds for Termination under 23 Pa.C.S.A. § 2511 (a) (8)

The grounds for termination of parental rights under 23 Pa.C.S.A. § 2511 (a) (8) are similar to the grounds established under 23 Pa.C.S.A. § 2511 (a) (5). However, under subsection (a) (8), the Agency need not prove incapacity or refusal by the parent, nor need it prove the absence of a likelihood that the services or assistance reasonably available to the parents will prove successful. Rather, the emphasis moves to the length of the lapse of time (from six months to twelve months, requiring that if the conditions which led to placement persist one year or

more after placement, then termination should occur unless the needs and welfare of the subject child suggest a contrary result.

In the instant case, to reiterate, the Child was in placement for some seventeen months before the Agency commenced the termination of parental rights proceedings. Thus, the twelve months in placement requirement of 23 Pa.C.S.A. § 2511 (a) (8) was not only met, it was exceeded. It is unnecessary to state again the manner and extent to which the conditions which necessitated placement continued, as that issue has been addressed above.

While Father may suggest that he has met his objective to obtain satisfactory housing for himself and the Child (as his current housing is adequate, if not ideal in terms of accommodations and long term availability), he cannot be found to have alleviated this concern under 23 Pa.C.S.A. § 2511 (a) (8). Pursuant to 23 Pa. C.S.A. § 2511 (b), the Court cannot consider Father's acquisition of adequate housing, as he did not initiate his efforts in that respect until well after he was notified that the Agency had filed its petition to terminate parental rights.³

As it was with the analysis under 23 Pa.C.S.A. § 2511 (a) (5), the additional factor the Court must determine under 23 Pa.C.S.A. § 2511 (a) (8) is whether "termination of parental

³ (b) Other considerations. -...With respect to any petition filed pursuant to (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.

rights would best serve the needs and welfare of the child.” Again, this factor is essentially subsumed in the Court’s consideration of the application of 23 Pa. C.S.A. § 2511 (b), as discussed below.

“Primary Considerations” Required by 23 Pa. C.S.A. § 2511 (b)

Supervening all of the other statutory considerations is the determination that the Court must make as to whether terminating Father’s parental rights to the Child will best serve the developmental, physical, and emotional needs and welfare of the child. The governing statute mandates that these concerns shall receive “primary consideration”. 23 Pa. C.S.A. § 2511 (b).

“Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child.” *In re Adoption of T.B.B.*, 835 A.2d 387, 397 (Pa.Super. 2003). An examination of the parent-child bond is required, where the Court must assess the effect upon the child of severing that bond. See *In re KCR-S.*, 958 A.2d 529, 533 (Pa.Super. 2008).

Dr. Suzanne Ail, a licensed psychologist with extensive experience in evaluating bonds between a child and persons of significance in that child’s life, performed the bonding assessments in respect to the various relationships to the Child which are pertinent in the termination case.

Dr. Ail concluded that K.P.-B. and Father have an insecure attachment, and the Court accepted her conclusion. (See *Finding*

of Fact 64) Such an attachment indicates that the Child has no confidence that Father will be emotionally available to him or that Father will provide stability to the Child. (*See Finding of Fact 90*)

The Federal Adoption and Safe Families Act (found at 42 U.S.C. §§ 620 through 679) requires that a child must achieve permanency within a reasonable period of time.

Placement of and custody issues pertaining to dependent children are controlled by the Juvenile Act, which was amended in 1998 to conform to the Federal Adoption and Safe Families Act (ASFA)...The policy underlying these statutes is to prevent children from languishing indefinitely in foster care, with its inherent lack of permanency, normalcy, and long-term parental commitment. Consistent with this underlying policy, the 1998 amendments... place the focus of dependency proceedings, including change of goal proceedings on the child. Safety, permanency, and well-being of the child must take precedence over all other considerations, including the rights of parents. *In re N.C.*, 909 A. 2d 818, 823 (Pa. Super. 2006)

K.P.-B. needs, and is deserving of, permanency and stability in his life. The Child cannot rely on Father to fulfill these critical needs. Father has never provided such an affirming environment to the Child in the past, and he remains unable to do so now. (*See Finding of Fact 95*)

On the other hand, K.P.-B. has a very strong attachment to his half-brother, Muhammad, who has been the most consistent care giver for him and who resides with the Child in the same resource home. (*See Findings of Fact 80-82*) K.P.-B.'s foster parents are desirous of adopting him and also have a commitment to his half-

brother. The resource home household members collectively provide to the Child the foundation the Child needs and deserves to develop secure attachments and to develop the ability to trust and rely on loved ones.


The record in this case is replete with evidence which clearly and convincingly establishes that the Child's interests, i.e., his several needs and his welfare, are best served by the termination of Father's parental rights.

CONCLUSION

The issues raised by Father in his Notice of Appeal lack merit.

The decree entered on October 7, 2013, terminating Father's parental rights in respect to K.P.-B. should be affirmed.

BY THE COURT:



JEFFREY J. REICH, JUDGE

Dated: November 25, 2013

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