

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN THE INTEREST OF: L.C.

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: J.A.B., MOTHER

No. 206 MDA 2014

Appeal from the Decree Entered December 23, 2013  
In the Court of Common Pleas of Luzerne County  
Orphans' Court at No.: A 8068

IN THE INTEREST OF: D.A.C., III

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: J.A.B., MOTHER

No. 207 MDA 2014

Appeal from the Decree Entered December 23, 2013  
In the Court of Common Pleas of Luzerne County  
Orphans' Court at No.: A 8070

BEFORE: DONOHUE, J., WECHT, J., and STRASSBURGER, J.\*

MEMORANDUM BY WECHT, J.:

**FILED JULY 01, 2014**

In these consolidated cases,<sup>1</sup> J.A.B. ("Mother") appeals the December 23, 2013 decrees that terminated her parental rights to her daughter, L.C.,

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> On March 11, 2014, this Court consolidated these cases *sua sponte*.

born in January 1999, and her son, D.A.C., III, (collectively “the Children”), born in June 2004. Mother’s appointed counsel has filed a petition for leave to withdraw as counsel pursuant to **Anders/Santiago**.<sup>2</sup> We affirm, and we grant Mother’s counsel’s petition.<sup>3</sup>

The Children have been in placement since April 6, 2010. The Children were removed due to sexual abuse perpetrated against their older siblings and because of physical abuse inflicted upon them. Mother did not attempt to stop the abuse and was the perpetrator of some of the physical abuse. The Children were placed also due to other parenting concerns stemming from Mother’s mental health issues. During the time that the Children have been in placement, Mother has not made gains in addressing those issues.

On June 18, 2013, Luzerne County Children and Youth Services (“CYS”) filed petitions for the termination of Mother’s parental rights. The trial court held a hearing on those petitions on December 19, 2013. When Mother and her court-appointed counsel appeared at the hearing, Mother stated that she only had learned of the hearing when she heard a “rumor”

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<sup>2</sup> **See Anders v. California**, 386 U.S. 738 (1967); **Commonwealth v. Santiago**, 978 A.2d 349 (Pa. 2009).

<sup>3</sup> On February 1, 2014, Mother filed an “Amendment Emerger [sic] Injunction” with this Court. It is less than clear what relief Mother sought in this petition. On March 13, 2014, we denied without prejudice the application for relief to the extent that it raised any issues that were properly preserved for merits review before this panel. All other requested relief was denied. To the extent that any requested relief remains to be resolved by this panel, it is disposed of within this memorandum.

approximately two weeks earlier while paying her property taxes. Notes of Testimony (“N.T.”), 12/19/2013, at 24. After a discussion with Mother, her counsel, and counsel for CYS, the trial court concluded that Mother was not credible regarding the lack of notice and ordered the hearing to proceed. N.T. at 29. However, arguing that her participation would jeopardize a King’s Bench motion she had filed with our Supreme Court, Mother refused to participate and left the courtroom. N.T. at 29-30. After Mother’s departure, the trial court granted her counsel’s oral motion to withdraw his appearance and counsel left the courtroom as well. N.T. at 31.

At the hearing, CYS presented the testimony of L.C., CYS caseworker supervisor Kelly Horning, and CYS caseworker Sherry Hartman. CYS also introduced the expert report of Dr. Lenora Hermann Finn, an expert in the field of clinical psychology, and the expert report of Dr. Sharma,<sup>4</sup> who conducted the psychiatric exam of Mother. In addition, the trial court granted CYS’ request to incorporate testimony from the May 8, 2013 permanency review hearing, at which the trial court changed the permanency plans for the Children from custodianship to adoption. Robert Blaskie, a therapist at Northeast Counseling; Sarah Luvender, a licensed clinical social worker; and Ms. Horning testified at that hearing.

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<sup>4</sup> Dr. Sharma’s first name does not appear in the record.

The trial court entered its decrees terminating Mother's parental rights on December 23, 2013. Mother filed her notice of appeal, which she titled "Motion for Appeal," on January 23, 2014.<sup>5</sup> The trial court then appointed new counsel for Mother for the purpose of this appeal. On January 27, 2014, the trial court filed its opinions pursuant to Pa.R.A.P. 1925(a), and the case now is ripe for review.

Mother raises the following question for our review:

Whether the [t]rial [c]ourt abused its discretion, committed an error of law and/or there was insufficient evidentiary support for its decision to terminate the parental rights of [Mother] to her minor children, L.C. and D.A.C.[?]

**Anders'** Brief at 5.

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).

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<sup>5</sup> Mother filed her notice of appeal with this Court on December 30, 2013. On January 17, 2014, we sent the notice of appeal to the trial court and directed that court to docket the notice with a December 30, 2013 filing date. However, the trial court did not do so; rather, the court recorded a filing date of January 23, 2014. Regardless of which filing date is credited, the appeal is timely.

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).

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.

\* \* \*

(5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the

parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

\* \* \*

(8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

\* \* \*

**(b) Other considerations.**--The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

23 Pa.C.S.A. § 2511.

The trial court terminated Mother's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(2), (5), (8), and (b). However, in order to affirm the termination of parental rights, this Court need only agree as to any one subsection of Section 2511(a) in addition to subsection (b). **See In re B.L.W.**, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*).

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 that 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).

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) (citation omitted).

To terminate parental rights under Section 2511(a)(2):

three things must be shown before a natural parent’s rights in a child will be terminated: (1) repeated and continued incapacity, abuse, neglect or refusal must be shown; (2) such incapacity, abuse, neglect or refusal must be shown to have caused the child to be without essential parental care, control or subsistence; and (3) it must be shown that the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.

***In re N.A.M.***, 33 A.3d 95, 100 (Pa. Super. 2011) (citing ***In re Geiger***, 331 A.2d 172 (Pa. 1975)).

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). Although the Act specifically does not require an evaluation of the bond between parent and child, our

case law requires the court to consider any such bond. **See *In re E.M.***, 620 A.2d 481 (Pa. 1993). However, a trial court is not required to order a formal bonding evaluation performed by an expert. ***In re K.K.R.-S.***, 958 A.2d 529, 533 (Pa. Super. 2008).

On March 20, 2014, Mother's court-appointed counsel, Louis J. Mattioli, III, filed an ***Anders*** brief with this Court and an application to withdraw as counsel for Mother pursuant to ***Anders v. California***, 386 U.S. 738 (1967). We must address that petition to withdraw as counsel before reaching the merits of the case. **See *Commonwealth v. Rojas***, 874 A.2d 638, 639 (Pa. Super. 2005) (quotation omitted) (stating, "[w]hen faced with a purported ***Anders*** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw.").

In ***In re V.E.***, 611 A.2d 1267 (Pa. Super. 1992), this Court extended the ability of counsel to withdraw when counsel believed an appeal to be frivolous from criminal direct appeals to appeals involving the termination of parental rights. We stated that counsel appointed to represent an indigent parent on an appeal from a decree terminating parental rights, after a conscientious and thorough review of the record, may petition this Court for leave to withdraw as counsel and must submit a compliant ***Anders*** brief. ***In re V.E.***, 611 A.2d at 1275. To withdraw pursuant to ***Anders***, counsel must: 1) petition the Court for leave to withdraw, certifying that after a thorough review of the record, counsel has concluded the issues to be raised are wholly frivolous; 2) file a brief referring to anything in the record that might



arguably support the appeal; and 3) furnish a copy of the brief to the appellant and advise him or her of the right to obtain new counsel or file a *pro se* brief to raise any additional points that the appellant deems worthy of review. ***Id.*** at 1273 (citing ***Anders*** 386 U.S. at 744). Thereafter, this Court must examine the record independently and must determine whether the appeal is wholly frivolous. ***Id.***

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

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

***Santiago***, 978 A.2d at 361. We also require counsel to send a letter advising the appellant of his or her rights. ***Commonwealth v. Millisock***, 873 A.2d 748, 752 (Pa. Super. 2005).

In his brief, counsel has provided a summary of the procedural and factual history of the case. ***Anders'*** Brief at 6-7. Attorney Mattioli presents the only possible argument that he believes would support the appeal, namely sufficiency of the evidence to terminate Mother's parental rights. He provides the facts and case law that support his conclusion that the appeal is

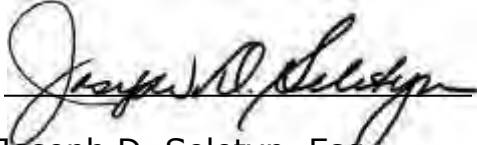
frivolous, noting that CYS provided ample evidence and Mother did not participate, such that no countervailing evidence was offered. **Id.** at 7-14. In his application to withdraw as counsel, Attorney Mattioli states that he has made a conscientious review of the record and has concluded that the appeal is wholly frivolous. Petition to Withdraw, 3/20/2014, at 1 ¶1. In addition, on March 20, 2014, Attorney Mattioli mailed Mother the petition to withdraw, a copy of the **Anders** brief, and a letter advising Mother of her rights to proceed *pro se* or to retain private counsel and to raise any additional issues that she deems worthy of consideration. The letter was attached to his petition to withdraw. Thus, counsel has complied substantially with the requirements of **Anders** and **Santiago**.

Prior to disposing of counsel's motion, we must conduct an independent review of the record to ascertain whether any non-frivolous issues could have been raised. We have conducted that review, and we conclude that the trial court's decision to terminate Mother's parental rights under Sections 2511(a)(2) and (b) is supported by clear and convincing evidence. There are no non-frivolous issues that counsel could have raised.

Having review the record, we are satisfied that the learned trial court's analysis in both of its opinions is accurate and complete. Accordingly, we affirm the trial court's decrees on the bases of the thorough trial court opinions, and we adopt them as our own. A copy of the trial court opinions are attached for reference.

Decrees affirmed. Petition to withdraw as counsel granted.

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: 7/1/2014

In the Interest: L.C.	:	In the Court of Common Pleas
	:	of Luzerne County
	:	Orphan's Court Division
	:	No. 40 DP 116 of 2010
	:	No. A-8068

### Memorandum Opinion

#### 1. Procedural History

The Petitioner, Luzerne County Children and Youth Services (Children and Youth or also referred to as the Agency) filed a Petition for the Involuntary Termination of Parental Rights (Petition) of the natural Mother (Mother) for the minor child, L.C..

A permanency hearing as well as a hearing to terminate parental rights was scheduled for December 19, 2013. The Mother appeared for the hearing, but opposed moving forward. The Mother indicated that she filed a King's Bench Motion before the Pennsylvania Supreme Court, and did not want to jeopardize the Motion in any way, so she refused to participate in the termination proceeding. It should also be noted that prior to the hearing, Mother's Court Appointed Counsel, Thomas Williams, Esquire, presented a Motion to Withdraw as Counsel due to his client's uncooperativeness. Counsel argued that the Mother was jeopardizing the defense of her case. Counsel indicated that he left the mother messages about the hearing, but that she would not return his calls or meet with him prior to the hearing. The mother denied receiving the calls from Attorney Williams. She testified that she heard a rumor while she was in the tax department that there was a hearing scheduled on this case. Counsel also represented that the Mother was filing motions pro se despite his representation. The Court, at first, denied the Motion, however, when the mother refused to participate in the hearing, and walked out of the courtroom, Counsel re-argued his motion once again, and the Court

granted the Motion allowing Counsel to withdraw. The Mother walked out of the hearing without offering any evidence or testimony. The hearing on the Petition of Children and Youth proceeded without the Mother.

Following the hearing, on December 20, 2013, this Court issued a Decree terminating the parental rights of the Mother. Particularly, Mother's parental rights were terminated pursuant to 23 Pa. C.S.A. Section 2511(a)(2), Section 2511(a)(5) and Section 2511(a)(8). In entering the termination decree, the Court gave primary consideration to the developmental, physical, and emotional needs and welfare of the child pursuant to 23 Pa. C.S.A. Section 2511 (b).

On December 30, 2013, the Mother, pro se, filed a document entitled "Motion for Appeal and the requisite Statement of Matters Complained of on Appeal was not filed, but a letter from the Mother accompanied the Appeal which states in pertinent part:

"I, Mother is appealing on the ground that Luzerne County Court House along with Luzerne County Children and Youth Service workers lack jurisdiction. Also, changing file numbers on L.C. and D.C.; improper notification on a Court hearing; same offense to be twice put in double jeopardy of life and limb (under Act 127 bring up cases that by law was to be destroyed on unfounded cases. This agency can only investigate things that happen in their county and not out of their own county. All information this agency is truing to bring back from the destroyed list."

The "Motion for Appeal" further states:

"As of October 10, 2013, Mother submitted a KBM in Supreme County of Pennsylvania. Numbers are: In Re: C.C.R., et al/ Pet of J.B., et al No. 178 MM 2013, CP-40-DP-117-2010, CP-40-DP-116-2010, CP-40-DP-115-2010, is still currently active and before the Court. I even have the right by law to have a trial by jury. After each and every level of Court has been used, I have the right to take it to even a higher Court of law. When laws have been violated, Judges signing for other Judges, changing of judges, changing of caseworkers and supervisors, files being filed under another number, Court information being misfiled, having hearings without proper notification by law, and even more.

Waiting for a ruling from the Supreme Court Justices on a case that is still currently active in the Court....Improper notification of any Court hearing or documents maybe considered a mistrial along with perjury.”

## 2. Findings of Fact

This case concerns, L. C., one of two minor children. Pertinent to this case, L.C. was born January 15, 1999; and is currently 15 years of age. This case involves the proposed termination of Mother’s parental rights.

It is un rebutted that the minor child has been in placement since April 6, 2010. The reasons (for placement) include the Mother’s failed attempts to comply with the permanency plan developed for the child. She refused to obtain mental health counseling nor did the Mother make the necessary progress towards alleviating the circumstances that necessitated the placement of the child. In meeting its requisite burden of proof, by clear and convincing evidence, regarding the termination of parental rights of the Mother, Petitioner offered into evidence a transcript dated May 8, 2013, which transcript concerned testimony presented at a hearing on May 8, 2013 to change the goal of the permanency plan for the minor child from custodianship to adoption. (Said transcript dated May 8, 2013 was introduced and marked P-7) The Petitioner stipulated that the testimony, if offered, would be the same as the testimony offered in the transcript.

Through the testimony offered from the May 8, 2013 transcript, the Petitioner offered the testimony of Robert Blaskie, a therapist who worked at Northeast Counseling for forty years in the outpatient department; Sarah Luvender, a licensed clinical social worker from Family Services Association; Kelly Horning, a children’s caseworker for eight years with Children and Youth Services. Additionally, the Mother testified before

the Court on May 8, 2013, and offered into evidence the testimony of her older daughter.

At the December 19, 2013 hearing, the Petitioner offered the testimony of the minor child, L.C., Kelly Horning, and Sherry Hartman, caseworker for the minor child for the last two years as well as introduced the expert reports of Dr. Lenora Herrmann-Finn, expert in the field of clinical psychology and Dr. Sharma, who performed a psychiatric examination of the mother.

### **3. Conclusions of Law**

After consideration of the credible evidence as summarized above and more detailed below, the Court concludes:

1. Children and Youth has shown by clear and convincing evidence that the parental rights of the Mother to the minor child, L.C., should be terminated pursuant to 23 Pa. C.S.A. Section 2511, subsections (a)(2), (a)(5) and (a)(8).

2. Children and Youth has shown by clear and convincing evidence the termination of the parental rights of the Mother, to her minor child, L.C., best serves the needs and welfare of the child pursuant to 23 Pa. C.S.A. Section 2511(b).

### **4. Discussion: Grounds for Termination of Mother**

The statute permitting involuntary termination of parental rights in Pennsylvania, 23 Pa. C.S.A. Section 2511, sets forth the certain irreducible minimum requirements of care that parents must provide to their children. A parent who cannot or will not meet the requirements within a reasonable time following the intervention by the State may properly be considered unfit and may properly have his or her rights terminated. In re: J.T. and R.T., 817 A.2d 505 (Pa. Super. 2002).

Termination of parental rights is an issue of constitutional dimensions because of the fundamental right of an individual to raise his or her own child. Therefore, in proceedings terminating parental rights, the Petitioner must prove by clear and convincing evidence that the statutory criteria have been met. Santosky v. Kramer, 455 U.S. 745 (1982), In Re: T.R., 502 Pa. 165, 465 A.2d 642 (1983). However, as the Pennsylvania Supreme Court has stated “a parent’s basic constitutional right to custody and rearing of his or her child is converted upon the failure to fulfill his or her parental duties to the child’s right to have proper parenting in fulfillment of his or her potential in a permanent, healthy, safe environment.” In Re: J.A.S., Jr., 2003 Pa. Super. 112, citing In the Interest of Lillie, 719 A.2d 327 (Pa. Super. 1998).

**A. 23 Pa. C.S.A. Section 2511(a)(2)**

A Court may terminate parental rights under section 2511 (a)(2) when:

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 of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

Accordingly, the Mother’s parental rights to the child, L.C., can be terminated under Section 2511(a)(2) of the statute. Credible testimony at the termination hearing was presented to show by clear and convincing evidence that the Mother did not remedy the conditions that gave rise to placement of the child.

The Petitioner offered the testimony of Robert Blaskie, a therapist who has worked at Northeast Counseling, Nanticoke, Luzerne County, Pennsylvania, for forty years in the outpatient department. Mr. Blaskie testified that he was familiar with the Mother. She was a patient of his for 1 ½ years. The Mother apparently treated at Northeast Counseling due to several diagnoses that included psychotic disorder NOS,



adjustment disorder with depressed mood, learning disability NOS and a provisional diagnosis of borderline intellectual functioning. Mr. Blaskie testified that initially, the Mother attended treatment at the counseling facility. However, in a letter dated October 12, 2011, Mr. Blaskie stated that while the Mother was cooperative, she had absolutely no insight. (N.T. of 5/8/13 at P. 22) She had very rigid beliefs. (N.T. of 5/8/13 at P. 23) She relayed a story of being a victim of the Agency and that she saw no reason for treatment. (N.T. of 5/8/13 at P. 23) While she treated at the facility, Mr. Blaskie indicated that she made no gains; (N.T. of 5/8/13 at P.23) she made no behavioral changes; and she did not make any intellectual changes. (N.T. of 5/8/13 at P. 23) The diagnoses that were originally made when she first came to the Agency, had not been remedied by the time she finished her course of treatment. (N.T. of 5/8/13 at P. 23)

Petitioner also offered the testimony of Sarah Luvender. Ms. Luvender is a licensed clinical social worker from Family Services Association, 31 West Market Street, Wilkes-Barre, Luzerne County, Pennsylvania. Ms. Luvender worked as a licensed clinical social worker for two years. She offered testimony that she was familiar with the Mother. Prior to her employment at Family Services Association, she worked as a community resource specialist at the Time Limited Family Reunification Program, offering parent education and case management for families involved with the Children and Youth system. She testified that as part of her job her goal was to put families back together (N.T. of 5/8/13 at P. 45). She worked at Time Limited Family Reunification for one year.

Ms. Luvender testified that the Mother was a client at the Time Limited Family Reunification Program (N.T. of 5/8/13 at P. 46). Ms. Luvender testified that she worked

with parents, educating them, observing visits and even participated in the visits between parents and child. (N.T. of 5/8/13 at P. 47) Ms. Luvender testified that she spent “a good amount of time working with the Mother”. (N.T. of 5/8/13 at P. 47) Ms. Luvender worked with the Mother from October 28, 2010 through August 5, 2011. During that ten month period, the witness worked with the Mother doing parenting education curriculum, including nurturing, child safety, making good choices and reflecting on ideas of who we are as parents. There was a set curriculum called Nurturing Parent, and it covered the areas of safety, boundaries, child development, age appropriateness, and discipline. (N.T. of 5/8/13 at P. 48) The Mother met with Ms. Luvender once a week regularly (N.T. of 5/8/13 at P. 49). Ms. Luvender also testified that she had seven observed visits with the Mother and the child. (N.T. of 5/8/13 at P. 51)

Ms. Luvender prepared a closing summary relative to the Mother’s file on or about August 16, 2011. The report summarized the progress the Mother had made. There were six specific categories, namely, that the Mother was “graded” on. The Mother was graded, with respect to each category, on a scale from one to three; one being below the average or the norm; two being average or the expected norm or three being an above average or above norm score. In particular, the Mother scored a one on relevant responses, insight and report change.

When asked about this scoring, Ms. Luvender explained that while the Mother attended program regularly, she did not complete the program successfully because her responses weren’t relevant; her insight was not there and there was no change reported. Ms. Luvender testified that there “was not much that was gained during the program”. (N.T. of 5/8/13 at P. 52) The witness testified that the responses of the Mother were

often scattered or did not necessarily match the subject that was being discussed. The witness testified that while there was participation in the program, and while the Mother did express a great deal of love her for children, (N.T. of 5/8/13 at P. 57) there was no real reflection as to what the Mother may have done wrong along the way to get involved with the Children & Youth system, and she did not feel there was anything to change. (N.T. of 5/8/13 at P. 58-60) Ms. Luvender rationalized that "if you don't have any insight into why it went wrong or what happened, you don't really have the ability then to correct it or change it or make it better or different". (N.T. of 5/8/13 at P. 61) Also, Ms. Luvender testified that staying on task was consistently difficult for the Mother. Ms. Luvender further stated that the parenting deficits that were there when the Mother first began the program were still there in August 2011. (N.T. of 5/8/13 at P. 52) None of the parenting issues were resolved, according to Ms. Luvender. (N.T. of 5/8/13 at P. 52 and P. 53)

Ms. Luvender observed seven visits between the Mother and the child at the Agency. (N.T. of 5/8/13 at P. 53) She stated that the Mother lacked insight and did not provide relevant responses to interactions. She stated the Mother lacked accountability for her past behavior. (N.T. of 5/8/13 at P. 53) Ms. Luvender stated that there was a lot of behavior during the parenting sessions that was bizarre and a bit irrational. Ms. Luvender felt that the behavior stemmed from a mental health issue. (N.T. of 5/8/13 of P. 53)

The Petitioner further offered the testimony of Kelly Horning from the May 8, 2013 proceeding. At that proceeding, Ms. Horning testified that she has been a children's caseworker for eight years. Currently, she is a Caseworker Supervisor at Children and

Youth Services, located at 111 North Pennsylvania Boulevard, Wilkes-Barre, Pennsylvania 18702. She had been a supervisor of this case for a year and a half. Ms. Horning was familiar with the Mother as well as with L.C.

Ms. Horning testified that pursuant to the permanency plan, the Mother was ordered to attend parenting services. She was required to undergo a mental health evaluation and mental health services. A comprehensive family assessment for the Mother and the child was recommended as well as family counseling for the Mother and child, individual counseling for the Mother, and victim's trauma counseling for the child. Also the Mother was required to maintain safe and stable housing and to cooperate and follow through with what was outlined in the family plan. In addition, there was a safety plan.

Ms. Horning testified that the placement of the child continued to be necessary and appropriate, due to the Mother's minimal level of compliance throughout the reporting period. (N.T. of 5/8/13 at P. 73-74) The Mother did not engage in any recommended services for the reporting period. She only attended supervised visits with her child(ren). (N.T. of 5/8/13 at P. 73, P. 74) The Mother did not appreciate the reasons for which counseling was mandated and did not continue the counseling sessions. Id. The Mother also failed to complete any mental health program during the last reported period. Furthermore, the Mother did not attend parenting classes in the latest period. The only reason that the Mother was given a "minimal compliance" grade was because she attended the visits with the children. (N.T. of 5/8/13 at P. 77) Ms. Horning testified that the Mother had not demonstrated any level of progress as the issues leading to placement

remained unresolved and there had been no successful completion or benefit from any of the services that were recommended. (N.T. of 5/8/13 at P. 78)

In this case the family service plan was prepared at the minimum of once every six months. A copy was provided to the parent once every six months and they were adopted by the Court. All of the services that were required were contained in the family service plan.

Ms. Horning also noted that there was an Order from the Court signed on April 23, 2012, by The Honorable Jennifer Rodgers, Luzerne County Court of Common Pleas, compelling the Mother to identify a mental health provider, and to provide the name of that provider to the Agency so that the Agency could ensure that she was in outpatient mental health counseling. (N.T. of 5/8/13 at P. 74) The witness testified that while there was a letter written to the Agency by counsel for the Mother at the time identifying two potential counselors that the Mother had in mind, ultimately, the Mother never sought treatment with any of the proposed counselors. (N.T. of 5/8/13 at P. 76)

Ms. Horning testified that mental health counseling is crucial to achieve emotional stability in order to be able to participate in a parenting program and to achieve maximum benefit from that program, as well to achieve the emotional stability to engage in recommended family counseling with the child.

Ms. Horning agreed that the Mother loves her child (N.T. of 5/8/13 at P. 79) and initially that the goal of Children and Youth was to remedy the conditions that gave rise to the placement outside the home (N.T. of 5/8/13 at P. 79), however, Children and Youth made available all services possible (N.T. of 5/8/13 at P. 80) to help this Mother reunify with her child, and the Mother was non-compliant. Ms. Horning testified that from April

2010 through November 2011, the goal was reunification with the Mother. The focus, however, changed in light of the Adoption and Safe Families Act. (N.T. of 5/8/13 at P. 80)

Mrs. Horning testified at the December 19, 2013 hearing as well. She confirmed that she has been supervising this case for two years. She explained to the Court that the Mother claims the natural father of the child is a man by the name "K K . or K K i or K K .". The Mother has never named any individual as the father other than this. (N.T. of 12/19/13 at P. 33) Mrs. Horning indicated that Children and Youth attempted to determine the paternity of the father, but the father is unknown to the agency. (N.T. of 12/19/13 at P. 35) Domestic Relations attempted to determine the father of this particular child on two occasions. (N.T. of 12/19/13 at P. 36) Introduced as P-2 at the September 2013 hearing, a letter from the Pennsylvania Bureau of Child Support Enforcement Paternity Tracking System, indicated that there was not any documentation whatsoever of any claim of paternity for L.C. A letter dated September 2012 (the second search) indicated the same information. The Pennsylvania Bureau of Child Support Enforcement Paternity Tracking System did not disclose documentation of acknowledgement of paternity regarding the minor child, L.C. (N.T. of 12/19/13 at P. 36) The Commonwealth has no record of who the father is in this case and the mother would not provide any information. (N.T. of 12/19/13 at P. 33 and 36) The Agency also conducted a diligent search and tried to determine the whereabouts of the father. No such individual was ever identified. (N.T. of 12/19/13 at P. 37)

The current placement of L.C. occurred 44 months ago. The placement has been continuous. (N.T. of 12/19/13 at P. 39) The child was removed as a result of physical

abuse, sexual abuse of two older siblings, deplorable housing conditions, and parenting concerns of the natural Mother as well as very serious mental health concerns of the Mother.

Children and Youth conducted an investigation and at the end of the assessment period, the Agency did confirm that the two older children of the Mother were the victims of sexual abuse by multiple paramours of the Mother; and the Mother was aware of the abuse occurring with the children. The Mother did not attempt to protect the children from this abuse. (N.T. of 12/19/13 at P. 39) Also, the maternal grandparent of the minor would inappropriately discipline the child; the Mother knew of it and did nothing to protect the child. (N.T. of 12/19/13 at P. 40)

Children and Youth then sought shelter care which was granted by the Court. The child was then deemed dependent and the Mother was directed to attend certain services to help address the concerns of the Agency. (N.T. of 12/19/13 at P. 41) The natural Mother was directed to complete mental health assessment with Northeast Counseling and to follow any recommendation that was made. Also, the Mother was ordered to attend parenting program through Family Services Association Time Limited Family Reunification Parenting Program. The Mother and child were to complete a comprehensive family assessment also with Dr. Lenora Herrmann Finn.

Dr. Finn diagnosed the Mother and recommended that she participate in individual therapy, as well as any recommendations made for a medication management program. She recommended that once Ms. B had stabilized her mental health issues, that she and the child become engaged in Family Therapy Services. Children and Youth in its ordinary course of business receives expert reports and these types of reports

are reviewed and kept by Children and Youth as a business record used to conduct its duties in the cases its assigned. Therefore, a report of Dr. Finn, (marked P-3) was introduced at the December 2013 hearing. Mrs. Horning indicated that the Mother never followed any of the recommendations of Dr. Finn.

The Petitioner introduced P-4 which was a report of Dr. Sharma at Northeast Counseling Services. Again, the witness testified that this was a report received in the ordinary course of business and it was reviewed and relied upon by the Agency in performing its duties. This report, Petitioner's P-4, was issued as a result of the psychiatric evaluation conducted by Dr. Sharma. Dr. Sharma diagnosed the Mother with psychotic disorder, not otherwise specified, and a mixed adjustment disorder with depressed mood. The doctor recommended that the Mother participate in a medication management program and that she attended individual therapy.

The Petitioner introduced P-5, a document addressed to the Agency from Northeast Counseling Services by Robert Blaskie. This document was relied upon by Children and Youth personnel to make its decisions concerning Mother and her child.

The Petitioner introduced P-6, a document entitled closing summary report from the Time Limited Family Reunification Parenting Program, and authored by Sarah Luvender. There were specific recommendations made for the Mother. Mother was recommended to engage in the mental health services. Mother never complied with the recommendations. (N.T. of 12/19/13 at P. 47-48)

Kelly Horning testified that some 44 months after placement, the Mother was not able to remedy the mental health issues with which she was initially diagnosed. (N.T. of 12/19/13 at P. 48) Mrs. Horning also stated that the child could not be returned to the



Mother at this time because the Mother is "stuck on the placement of the children. The Mother voiced to the Agency that there is nothing wrong with her; that all their reports are nonsense. Mother does not recognize the significance of her mental health issues, and that they have an impact on her ability to protect her children." (N.T. of 12/19/13 at P. 48)

Mrs. Horning testified that the child would not be safe if she were returned to the home because of the Mother's failure to comply with the recommendations for psychiatric evaluation. (N.T. of 12/19/13 at P. 48)

Turning next to the issues of parenting, Mrs. Horning testified that the Mother knew that the two older children of the Mother were being sexually abused and the others, including L.C. and another child, D.C., were being physically disciplined by a grandparent and the mother did nothing to stop the abuse or protect the children. She failed to protect her child and continues to deny that there are any issues with her parenting or her role in placement of the children. Therefore, the witness testified that the Mother would not be able to protect her children from further instances of abuse and neglect. (N.T. of 12/19/13 at P. 49) The Mother has not remedied the parenting deficits which were initially identified 44 months ago when the child was first placed. (N.T. of 12/19/13 at P. 49)

With regard to the family assessment performed by Dr. Finn, the issues identified by Dr. Finn were not remedied by the Mother. The family assessment would not be done until the Mother addressed her mental health issues. Although the agency attempted to make referrals for the service, the primary issue was the Mother's mental health

condition. If she was not enrolled in the course of mental health treatment, the family therapy would absolutely not be able to take place. (N.T. of 12/19/13 of P. 50)

The witness testified that Children and Youth was always given the same response from multiple sources who were asked to do the family therapy....that while the Mother's mental health issues were unresolved, she would not be able to be a positive contributor to the family therapy sessions. The child needed this counseling to be able to process what she had gone through.....she needed to be able to trust the Mother; and without the family therapy, that could not occur. (N.T. of 12/19/13 at P. 51) The family therapy could not be started until the Mother made certain progress with individual counseling, and she refused. Family therapy was to be with either Dr. Jeffrey Fremont or Mary Marin Counseling Services.

As stated herein, the Mother was given an opportunity by Judge Jennifer Rogers, Luzerne County Court of Common Pleas, Orphans Court, to select a therapist of her own choosing. She gave the Mother ten days to provide the agency with the name of that counselor. No such counselor was identified by the Mother. (N.T. of 12/19/13 at P. 53) The Mother stated that she did not have any mental health problem. She never identified any mental health counselor. (N.T. of 12/19/13 at P. 53)

Mrs. Horning testified that the child(ren) could not be returned to the Mother because she failed to seek mental health counseling, she failed to resolve her parenting issues and she failed to go to family therapy. Further, the Mother continues to deny that she has any issues. According to Mrs. Horning, returning the child to the Mother would put the child in immediate risk of further instances of abuse. The safety concern is that

she won't even acknowledge the issues that led to placement. (N.T. of 12/19/13 at P. 54)

This is a safety concern. (N.T. of 12/19/13 at P. 55)

Mrs. Horning testified that the child has been in placement more than 12 months from the date of their removal; that the conditions which led to removal still exist; that termination of parental rights best serves the needs and welfare of the child; that the natural Mother has exhibited a continued incapacity or refusal which places the child to be without essential parental care; that the Mother has not remedied those conditions; that the Mother cannot or will not remedy those situations and finally that the conditions that led to the removal will not be remedied within a reasonable period of time. The Mother has not ever made any progress to remedy the conditions that led to the removal. The Mother will not even acknowledge that any conditions exist. (N.T. 12/19/13 at P. 55-56.

Mrs. Horning finally testified that the permanency plan is for adoption, established by the Court after a hearing on May 8, 2013 due to the noncompliance of the Mother for any recommended services. (N.T. of 12/19/13 at P. 57) Mrs. Horning testified that the Agency has made all efforts to finalize the goal of adoption. Children and Youth filed a petition to terminate parental rights; they identified an adoptive family; they registered the child with the State Wide Adoption Network; and offered adoption and caseworker counseling services to the child and the foster family. (N.T. of 12/19/13 at P. 58)

The natural Mother has not demonstrated any progress to alleviate the circumstances that gave rise to the placement of the minor child. The child is safe in the current placement setting. The foster Mother is B D . The child is doing

well. She does not have any special needs. B: . D' has identified herself as an adoptive resource for the child. The child has been in her placement for the 44 months.

Mrs. Horning stated that the child will have the permanency and the stability of a safe and stable home environment with all of the love and nurturing and support they deserve and need with the D family. B: . D' meets the physical needs of the child. She provides shelter, clothing and food and the child has received the appropriate medical attention and immunizations. Barbara Durling also meets the psychological and emotional needs of the child. (N.T. of 12/19/13 at P. 62)

Mrs. Horning further testified that the child was engaged in specialized trauma therapy at Valley Counseling, and Mrs. D made sure she was present for every appointment. She has provided the child with support while going through this process. The child is ready to move on with her life. She successfully coursed out of the treatment session. Mrs. D is very involved with the child's educational needs. She helps her do her homework. She encourages good study habits and insures that the child is in school. Finally, Mrs. D meets the developmental needs of the child. She insures that the child stay involved in extra curricular activities outside of school that continue to support healthy growth. The child is very happy with this setting. (N.T. of 12/19/13 at P. 62-64)

The testimony of Sherry Hartman, a caseworker for the child, revealed that she has known the child since August 2012, serving as her caseworker. She observed the child with B D often. She sees the child on a monthly basis for two hours. Her contact with the child and Mrs. D has been since August 2012.

Sherry Hartman provided the Court with information concerning the Di family. B. D. had a life time partner, J. H., who recently passed away on September 12, 2013. The child struggled with this, but she was helped with counseling. R. D., B.'s Mother, also resides in the home. There is A., who is 17 and J., who is 16; K. who is 15 and L.C., who is 14 along with D.C. who is 9. L.C. has been assimilated into this family. She is included in all family activities. She receives medical, dental and eye care. L.C. wears glasses. There is also an ongoing dental issue for L.C. When the child came into the care of the foster parent, her teeth were neglected and she required treatment. She had to have braces. (N.T. of 12/19/13 at P. 67) The child is in the appropriate grade level. L.C. is excelling in school. In fact, she stated that she is on the Honor Roll. (N.T. of 12/19/13 at P. 68) She has one B and all her other grades are As. L.C. participates in extra curricular activities and seems to enjoy the same. Mrs. D. meets all the needs of the child, including physical, dental, medical, developmental and emotional. There is a bond between her and the child, a parent/child bond. (N.T. of 12/19/13 at P. 68) Most notably, the minor child referred to B. D. as her mother. (N.T. of 12/19/13 at P. 6) In comparison, Ms. Hartman indicated that the bond between the child and the natural Mother was more like a friendship bond. She observed that the bond with the foster Mother and child is stronger. (N.T. of 12/19/13 at P. 68)

Ms. Hartman testified that if the Court were to terminate the parental rights of the Mother there would be no effect on the child. (N.T. of 12/19/13 at P. 69) The child is committed to the adoptive family. (N.T. of 12/19/13 at P. 69) She has asked that she be adopted. She expressed that she wants this proceeding to move forward so that she can

be a permanent part of the adoptive family. (N.T. of 12/19/13 at P. 6-7) The caseworker testified that there would not be any negative detriment to the child. (N.T. of 12/19/13 at P. 69) Contact between the child and the Mother was suspended as a result of prior testimony and there has not been any negative detriment to the child. The minor does not even ask about the Mother.

Should the Court grant the Petitioner's petition, Mrs. D has committed to adopting the child. That would be a positive effect. She would become a permanent part of a very caring, loving and nurturing family. As the child's caseworker, this would be in the child's best interests. (N.T. of 12/19/13 at P. 70) This home is where the child should live. (N.T. of 12/19/13 at P. 70-71) The physical, psychological, emotional, educational and medical needs of the child are being met. (N.T. of 12/19/13 at P. 71)

Mrs. D is aware that should she adopt the child, she would have a legal and financial obligation towards the child just as if the child were her own. Mrs. D is also aware that should she die, the child is able to inherit from her as if the child were born to her. The child very much wishes to be adopted. (N.T. of 12/19/13 at P. 72)

It should be noted that while the Mother did not participate in the December hearing, she did offer testimony at the goal change hearing on May 8, 2013. The transcript was introduced and incorporated by reference at the December hearing. In May 2013, the Mother acknowledged seeing Dr. Finn. She actually saw her on 4 occasions, 12/14/10; 12/3/10, 1/11/2011 and 3/3/11, but the Mother did not agree with Dr. Finn's recommendations. The Mother testified that she completed individual mental health treatment before it was even Court ordered. (N.T. of 5/8/13 at P. 121) The Mother testified that she went to parenting classes beginning April 2012, but the

testimony established that while the Mother may have inquired into parenting programs at certain facilities, (N.T. of 5/8/13 at P. 122) she did not go because she felt she already completed courses back in 2010 and she did not believe it was necessary to go every year. (N.T. of 5/8/13 at P. 123) Since April 2012, the Mother has not seen Dr. Fremont for individual counseling as well.

The Mother was not permitted unsupervised visitation because she was noncompliant with her recommended programs. (N.T. of 5/8/13 at P. 102) Mother failed to re-engage in her mental health treatment and to participate in a parenting program. (N.T. of 5/8/13 at P. 103)

The Court also had the opportunity to speak to L.C. at the goal change hearing, and to take her preference into consideration. The child stated that she wanted to be adopted. She hoped to have this matter concluded so that she could move on with her life.

L.C. was present for the December 2013 hearing. L.C., spoke to the Court privately in Chambers. L.C. indicated that she was very close to her foster family (N.T. of 12/19/13 at P. 3) She testified that she and her foster family are really well together....everything is going well...I really hope this termination goes through. (N.T. of 12/19/13 at P. 6)

Based on the testimony of Kelly Horning and Sherry Hartman, and after reviewing the transcript of the hearing conducted on May 8, 2013, and the evidence presented to this Court, the Court finds that subsequent to the placement of the child on April 6, 2010, Mother was not able to maintain adequate safe housing for the children and was unable to benefit from any of the services to address her parenting issues.

Mother was initially having supervised visitation with the children. Before the Mother was allowed to have an increase of visits with the child, Mother was required to complete services. Mother was referred to mental health counseling and parenting classes.

Therefore, the Court finds that Mother has not been able to remedy the conditions that gave rise to the placement of the child which was mainly her failure to comply with the family service plan.

Unlike 23 Pa. C.S.A. Section 2511(a)(1), subsection (a)(2) does not emphasize a parent's refusal or failure to perform parental duties, but instead emphasizes the child's present and future need for essential parental care, control or subsistence necessary for his physical or mental well-being. Therefore, the language in subsection (a)(2) should not be read to compel Courts to ignore a child's need for a stable home and....this is particularly so where disruption of the family has already occurred and there is no reasonable prospect for reuniting it. In RE E.A.P., 944 A.2d 79(Pa. Super. 2008).

Given the overwhelming evidence and testimony, it is clear that Mother has received and/or has been offered extensive services over a period of years and that she has derived no benefit from these services.

At this juncture, the child's right to have proper parenting in fulfillment of HI potential in a permanent, healthy, safe environment outweighs Mother's interest. In Re: J.A.S., Jr., 2003 Pa. Super. 112, citing In the Interest of Lillie, 719 A.2d 327 (Pa. Super. 1998).

##### **5. Discussion: Grounds for Termination for Mother**

###### **A. 23 Pa. C.S.A. Section 2511 (a)(5)**

A Court may terminate the parental rights under Section 2511(a)(5) when:



The children has been removed from the care of the parent by the Court or under voluntary agreement with an agency for a period of a least six months, the conditions of which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

The Mother's parental rights may also be terminated under this provision of the Statute. Under 23 Pa. C.S.A. Section 2511(a)(5), the agency must show: 1) The conditions giving rise to placement continue to exist; 2) Those conditions will not be remedied in a reasonable period of time; and 3) Termination of parental rights would best serve the needs and welfare of the child. Accordingly, the Court will take these one at a time.

(1) Conditions Continuing to Exist

The child was placed on April 6, 2010 due to an emergency shelter care Order issued by this Court. Therefore, the child has been removed for at least six months. It is also clear through the testimony outlined herein, that the natural Mother, has been unable to resolve the issues that gave rise to the placement of the minor child, i.e. inability and/or unwillingness to take responsibility for parenting her children and obtain counseling. The Mother did not comply with the permanency plan developed for the children nor did she make the necessary progress towards alleviating the circumstances that necessitated the placement of the children.

The Mother was unable to maintain a safe and stable housing and did not resolve her parenting issues. The overwhelming evidence shows that all of these issues have yet to be remedied and the Mother simply refuses to obtain mental health counseling as

directed. While she has participated in parenting classes, she did not make any progress towards remedying the issues that led to the child's removal.

The Court has recognized this issue above in its analysis of Section 2511(a)(2) and finds the same consideration apply for Section 2511(a)(5) that have already been discussed extensively in this Memorandum. Furthermore, the Court applies this same reasoning in concluding that the natural Mother failed to remedy the conditions that originally gave rise to placement of the minor child, L.C.

### (2) Remedy of Conditions in Reasonable Time

Mother has had over 3 years to remedy the conditions, which gave rise to placement, yet the evidence shows that she has been unable to make any progress. Dr. Hermann-Finn concluded her evaluation of the Mother approximately one year after placement, and found that the Mother still did not benefit from any services because Mother refused to admit that she has a problem with parenting and refused to attend mental health counseling. Mother continually views herself as the perfect parent who did not need any changing. This Court finds that Mother has been and is unable to remedy the conditions that gave rise to placement of the minor children within a reasonable time period.

### (3) Needs and Welfare of the Child

The term "needs and welfare" of a child refers to both tangible and intangible needs. The intangible needs of a child include love, comfort, security and closeness. In re Matsock, 416 Pa. Super. 520, 611 A.2d 737, 747 (1992). There is nothing in the record that shows that the natural Mother is presently capable of providing a safe, secure environment for the minor children.

Parental duty is best understood in relation to the needs of a child. These needs, both physical and emotional, cannot be met by a mere passive interest in the development of the child. Meeting a child's needs is a positive duty that requires affirmative performance. In re Shives, 363 Pa. Super. 225, 525 A.2d 801, 802 (1987).

A parent is not relieved of his or her responsibility relating to the needs of a child when a child has been placed in foster care. A non-custodial parent has a duty to exert himself to take and maintain a place of importance in the child's life. In re Adoption of M.J. H., 348 Pa. Super. 65, 501 A.2d 648 (1985). A parent must demonstrate a continuing interest in the child and make a genuine effort to maintain communication and association with the child. In re Adoption of McCray, 331 A.2d 652 (Pa. 1975). Moreover, a parent with a child in foster care has an affirmative duty to work toward the return of the child. In Re: William L., 477 Pa. 322, 383 A.2d 1228 (1978).

When considering the needs and welfare of the child, it is also important for the Court to consider the bond between the parent and the child because severance of a strong parental bond can have a detrimental impact on the child. Matsock, *Supra*.

Petitioner presented credible testimony regarding the needs, welfare and best interest of the minor, L.C., in relation to their Mother. Petitioner introduced the testimony of Ms. Luvender who observed seven visits between the Mother and the child at the Agency. (N.T. of 5/8/13 at P. 53) She stated that the Mother lacked insight and did not provide relevant responses to interactions. (N.T. of 5/8/13 at P. 53) Ms. Luvender stated that there was a lot of behavior during the parenting sessions that was bizarre and a bit irrational. Ms. Luvender felt that the behavior stemmed from a mental health issue. (N.T. of 5/8/13 of P. 53)

According to Kelly Horning, the foster parent has met the child's physical, developmental and emotional needs. With respect to the child's physical needs, the foster parent provides food, shelter and clothing. With respect to her developmental needs, the foster parent makes sure the child participates in extra curricular activities outside school to support healthy growth. Mrs. Horning further testified that the child was engaged in specialized trauma therapy at Valley Counseling, and Mrs. D made sure she was present for every appointment. The foster parent has provided the child with support while going through this process. The child is ready to move on with her life. She successfully coursed out of the treatment session. Mrs. D is very involved with the child's educational needs. She helps her do her homework. She encourages good study habits and insures that the child is in school. Finally, Mrs. D meets the developmental needs of the child. The child is very happy with this setting.

The testimony of Sherry Hartman, a caseworker for the child, revealed that she has known the child since August 2012, serving as her caseworker. She observed the child with B D often. She sees the child on a monthly basis for two hours. Her contact with the child and Mrs. D has been since August 2012.

Sherry Hartman provided the Court with information concerning the D family. B D had a life time partner, J H , who recently passed away on September 12, 2013. The child struggled with this, but she was helped with counseling. R D , B 's Mother, also resides in the home. There is A , who is 17 and J , who is 16; K who is 15 and L.C, who is 14 along with D.C. who is 9. L.C. has been assimilated into this family. She is included in all family activities. She receives medical, dental and eye care. L.C. wears glasses. The child is in the appropriate

grade level. L.C. is excelling in school. She is on the Honor Roll. Mrs. D meets all the needs of the child, including physical, dental, medical, developmental and emotional. There is a bond between her and the child, a parent/child bond. Ms. Hartman indicated that the bond between the child and the natural Mother was more like a friendship bond. She observed that the bond with the foster Mother and child is stronger.

The Petitioner also presented testimony regarding the problems the child was initially having as a result of the abuse. The child was removed from a home where two older children were being sexually abused, and the Mother knew of the abuse, and did nothing to protect the children. Moreover, the child was subject to abuse by a grandparent. The Mother knew of the abuse and did nothing to protect against it. There was another child in the home, and with regard to this child, there was a concern about physical discipline. For example, the child would be locked out of the house as a form of discipline. Also, the child was locked in a medium sized dog cage for extended periods of time as a form of punishment.

The testimony established that when the child stopped having contact with her Mother, there was no negative effect. The child has been integrated into the foster family. There is no existing bond between the child and the Mother. The child does not try to remember her Mother and also does not want to be with her. Ms. Hartman testified that should the Court terminate the Mother's parental rights, the termination would not have a negative effect on the child. Should the Court permit the adoption by the foster parent, the adoption would have a positive effect on the child. (N.T. of 12/19/13 at P. 69)

Most significant, this Court recognized that the minor, when referring to the foster mother and deceased foster father, called them “mom” and “dad”. She clearly expressed her wishes to be adopted by her foster parent.

Accordingly, the Court finds that the termination of Mother’s parental rights would best serve the needs and welfare of the child.

**6. Discussion: Grounds for Termination For Mother**

A. 23 Pa. C.S.A. Section 2511 (a)(8)

A Court may terminate the parental rights under Section 2511(a)(8) when:

The child has been removed from the care of the parent by the Court  
Or under voluntary agreement with an agency, twelve (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 would best serve the needs and welfare of the child.

Parental rights may be terminated under this provision of the Statute. Under 23 Pa. C.S.A. Section 2511(a)(8), the agency must show: 1) The child has been removed for at least twelve (12) months. 2) The conditions that gave rise to placement continue to exist, and 3) Termination of parental rights would best serve the needs and welfare of the child. Accordingly, the Court finds with regard to each of these:

(1) Time Period for Removal of Child

It is undisputed that the minor child, L.C. has been removed from the custody of Mother since April 6, 2010. Accordingly, this removal has persisted well in excess of the statutorily required twelve (12) months since the date of the child’s placement. Thus, the requisite minimum of at least twelve (12) months from removal of the minor children from the Mother has elapsed so as to comply with this section of 2511(8).

(2) Conditions Continuing To Exist

The conditions that led to the children's removal from the Mother's care and into placement were Mother's inability and unwillingness to take responsibility for the care and maintenance of her minor child, L.C., and her inability to provide and maintain safe, stable and adequate housing. The Court has performed the above extensive analysis in taking testimony and finding credible evidence in concluding that Mother failed to derive any benefit from services and unwillingness to participate in counseling to comply with the developed permanency plan. Therefore, the conditions that gave rise to placement continue to exist.

In discussing and finding that Mother's conditions continue to exist, the Court incorporates its reasoning and the testimony of all witnesses already discussed in this Memorandum found in the section addressing 23 Pa. C.S. Section 2511(a)(2).

### (3) Needs and Welfare of the Child

Once the Court has found that involuntary termination of parental rights is warranted under the Act, the Court must then "give primary consideration to the developmental, physical and emotional needs and welfare of the child."

The Court has done this and finds the same considerations apply that have already been discussed extensively in this Memorandum. Furthermore, the Court applies the same reasoning for concluding that these needs will be served by the termination of Mother's parental rights.

## **7. Additional Considerations Under 23 Pa. C.S.A. Section 2511(b)**

### A. FOR MOTHER

#### 1. ENVIRONMENTAL FACTORS

Title 23 Pa. C.S.A. Section 2511(b) specifies that a Court may not terminate the parental rights “solely on the basis of environmental factors such as inadequate housing, furnishings, clothing, and medical care if found to be beyond the control of the parent.”

As “environmental factors beyond the control of Mother” was not the linchpin in the placement of the minor children and because of the presence of other, independent factors utilized in the placement of D.C. and L.C., this consideration does not apply and will not be addressed.

#### B. Needs and Welfare of the Child

Once the Court has found that involuntary termination of parental rights is warranted under the Act, the Court must then “give primary consideration to the developmental, physical and emotional needs and welfare of the child.” This is to be a separate inquiry and even where the Court has already considered the needs and the welfare of the child under one of the grounds of termination, the Court must do so again. In re Matsock, 611 A.2d 738 (1992).

The Court has done this and finds the same considerations apply that have already been discussed extensively in this memorandum. Furthermore, the Court applies the same reasoning for concluding that these needs will be served by the termination of the Mother’s parental rights.

#### **8. Adoption and Safe Families Act (ASFA) Considerations**

The Pennsylvania Superior Court relied upon the Adoption and Safe Families Act, ASFA, in In re Z.P., 994 A.2d 1108 (Pa. Super. 2010). The goal of the ASFA was described as follows:

Succinctly, this means that when a child is placed in foster care, after reasonable efforts have been made to reestablish the biological relationship, the



needs and welfare of the child require CYS and foster care institutions to work toward termination of parental rights, placing the child with adoptive parents. It is contemplated this process realistically should be completed within 18 months. Id. At 1119-1120, citing In re G.P., 851 A.2d 967, 975-976 (Pa. Super. 2004).

The Court also provided that “above all else....adequate consideration must be given to the needs and welfare of the child....A parent’s own feelings of love and affection for a child, alone, do not prevent termination of parental rights.” Id. At 1121 (internal citation omitted).

In reversing the trial Court and terminating the natural parent’s parental rights, the Superior Court held:

ASFA related policies no demand reasonable efforts within a reasonable time to remedy parental incapacity. Z.P. has already been in foster care for the first two years of his life, and his need for permanency should not be suspended, where there is little rational prospect of timely reunification.” Id. At 1125-6.

These ASFA related policies are applicable in the present case of the minor child, D.C. The child has been in placement since April 6, 2010, more than a three (3) year period. Accordingly, a reasonable time of 18 months has long expired to remedy parental incapacity and there is little rational prospect of the timely reunification of D.C. to his Mother.

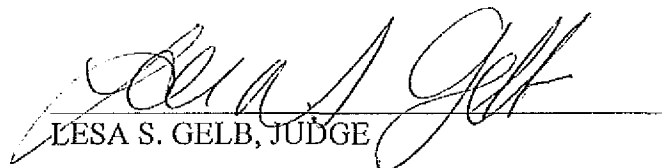
## **9. Conclusion**

Finally, the Court notes that the Guardian Ad Litem expressed on the record, after having been present for all the testimony and evidence, his belief that the Petitioner has sustained its burden of proof by clear and convincing evidence and that the parental rights of Mother be terminated as it is in the minor’s best interest to be free for adoption. The Guardian Ad Litem expressed that throughout his entire involvement with the child, the Mother has in no way demonstrated compliance of any sort. He stated that the child is

doing quite well in the foster home and "that they very much deserve their new family".  
(referring to D.C. and L.C.)

This Court agrees and finds that the Mother cannot offer to her child the basic physical, developmental and emotional needs that her child requires throughout her future life. Mother has been given ample time to address and remedy her problems, but has failed to successfully do so. The Court finds that the Mother is not able to meet her child's needs. In stark contrast, the foster parent has amply demonstrated she could meet the physical, developmental and emotional needs of the child and that the minor, L.C., has thrived under her care. The child needs and deserves a permanent home with a loving and capable parent. The only way to provide this is to terminate the rights of the Mother. Clearly, it is in the child's best interest to do so.

BY THE COURT:

  
LESA S. GELB, JUDGE

DATE: 1/27/14

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In the Interest: D.C.	:	In the Court of Common Pleas
	:	of Luzerne County
	:	Orphan's Court Division
	:	No. 40 DP 115 of 2010
	:	No. A-8076

### Memorandum Opinion

#### 1. Procedural History

The Petitioner, Luzerne County Children and Youth Services (Children and Youth, and also referred to as the Agency) filed a Petition for the Involuntary Termination of Parental Rights (Petition) of the natural Mother (Mother) for the minor child, D.C.

A permanency hearing and a hearing to terminate parental rights were scheduled for December 19, 2013. The Mother appeared for the hearing, but opposed moving forward. The Mother indicated that she filed a King's Bench Motion before the Pennsylvania Supreme Court, and did not want to jeopardize the Motion in any way, so she refused to participate in the termination proceeding. The Mother walked out of the hearing without offering any evidence or testimony.

It should be noted that prior to the hearing, Mother's Court Appointed Counsel, Thomas Williams, Esquire, presented a Motion to Withdraw as Counsel due to his client's uncooperativeness. Counsel argued that the Mother was jeopardizing the defense of her case. Counsel indicated that he left the mother messages about the hearing, but that she would not return his calls or meet with him prior to the hearing. The mother denied receiving the calls from Attorney Williams. She testified that she heard a rumor while she was in the tax department that there was a hearing scheduled on this case. Counsel also represented that the Mother was filing motions pro se despite his

representation. The Court, at first, denied the Motion, however, when the mother refused to participate in the hearing, and walked out of the courtroom, Counsel re-argued his motion once again, and the Court granted the Motion allowing Counsel to withdraw. The hearing on the Petition of Children and Youth then proceeded without the Mother.

Following the hearing, on December 20, 2013, this Court issued a Decree terminating the parental rights of the Mother. Particularly, Mother's parental rights were terminated pursuant to 23 Pa. C.S.A. Section 2511(a)(2), Section 2511(a)(5) and Section 2511(a)(8). In entering the termination decree, the Court gave primary consideration to the developmental, physical, and emotional needs and welfare of the child pursuant to 23 Pa. C.S.A. Section 2511 (b).

On December 30, 2013, the Mother, pro se, filed a Notice of Appeal to the Superior Court. It should be noted that the Appeal is entitled "Motion for Appeal" and the requisite Statement of Matters Complained of on Appeal was not filed, but a letter from the Mother accompanied the Appeal which states in pertinent part:

"I, Mother, is appealing on the ground that Luzerne County Court House along with Luzerne County Children and Youth Service workers lack jurisdiction. Also, changing file numbers on L.C. and D.C.; improper notification on a Court hearing; same offense to be twice put in double jeopardy of life and limb (under Act 127 bring up cases that by law was to be destroyed on unfounded cases. This agency can only investigate things that happen in their county and not out of their own county. All information this agency is trying to bring back from the destroyed list."

The "Motion for Appeal" further states:

"As of October 10, 2013, Mother, submitted a KBM in Supreme County of Pennsylvania. Numbers are: In Re: C.C.R., et al/ Pet of J.B., et al No. 178 MM 2013, CP-40-DP-117-2010, CP-40-DP-116-2010, CP-40-DP-115-2010, is still currently active and before the Court.

I even have the right by law to have a trial by jury. After each and every level of Court has been used, I have the right to take it to even a higher Court of law. When laws have been violated, Judges signing for other Judges, changing of judges, changing of caseworkers and supervisors, files being filed under another number, Court information being misfiled, having hearings without proper notification by law, and even more. Waiting for a ruling from the Supreme Court Justices on a case that is still currently active in the Court.....Improper notification of any Court hearing or documents maybe considered a mistrial along with perjury.”

## 2. Findings of Fact

This case concerns, D. C., one of two minor children. Pertinent to this case, D.C. was born June 7, 2004; and is currently 8 years of age. This case involves the proposed termination of Mother’s parental rights of D.C.

It is un rebutted that the minor child has been in placement since April 6, 2010. The reasons (for placement) include the Mother’s failed attempts to comply with the permanency plan developed for the child nor did the Mother make the necessary progress towards alleviating the circumstances that necessitated the placement of the child or obtain mental health counseling. In meeting its requisite burden of proof, by clear and convincing evidence, regarding the termination of parental rights of the Mother, Petitioner offered into evidence a transcript dated May 8, 2013, which transcript concerned testimony presented at a hearing on May 8, 2013 to change the goal of the permanency plan for the minor child from custodianship to adoption. (Said transcript dated May 8, 2013 was introduced and marked P-7) The Petitioner stipulated that the testimony, if offered, would be the same as the testimony offered in the transcript.

Through the testimony offered from the May 8, 2013 transcript, the Petitioner offered the testimony of Robert Blaskie, a therapist who worked at Northeast Counseling for forty years in the outpatient department; Sarah Luvender, a licensed clinical social

worker from Family Services Association; Kelly Horning, a children's caseworker for eight years with Children and Youth Services. Additionally, the Mother testified before the Court on May 8, 2013, and offered into evidence the testimony of her daughter.

At the December 19, 2013 hearing, the Petitioner offered the testimony of a minor child, L.C., Kelly Horning, and Sherry Hartman, caseworker for the minor child for the last two years as well as introduced the expert reports of Dr. Lenora Herrmann-Finn, expert in the field of clinical psychology and Dr. Sharma, who performed a psychiatric examination of the mother.

### **3. Conclusions of Law**

After consideration of the credible evidence as summarized above and more detailed below, the Court concludes:

1. Children and Youth has shown by clear and convincing evidence that the parental rights of the Mother to the minor child, D.C., should be terminated pursuant to 23 Pa. C.S.A. Section 2511, subsections (a)(2), (a)(5) and (a)(8).

2. Children and Youth has shown by clear and convincing evidence the termination of the parental rights of the Mother, to her minor child, D.C., best serves the needs and welfare of the child pursuant to 23 Pa. C.S.A. Section 2511(b).

### **4. Discussion: Grounds for Termination of Mother**

The statute permitting involuntary termination of parental rights in Pennsylvania, 23 Pa. C.S.A. Section 2511, sets forth the certain irreducible minimum requirements of care that parents must provide to their children. A parent who cannot or will not meet the requirements within a reasonable time following the intervention by the State may

properly be considered unfit and may properly have his or her rights terminated. In re: J.T. and R.T., 817 A.2d 505 (Pa. Super. 2002).

Termination of parental rights is an issue of constitutional dimensions because of the fundamental right of an individual to raise his or her own child. Therefore, in proceedings terminating parental rights, the Petitioner must prove by clear and convincing evidence that the statutory criteria have been met. Santosky v. Kramer, 455 U.S. 745 (1982), In Re: T.R., 502 Pa. 165, 465 A.2d 642 (1983). However, as the Pennsylvania Supreme Court has stated “a parent’s basic constitutional right to custody and rearing of his or her child is converted upon the failure to fulfill his or her parental duties to the child’s right to have proper parenting in fulfillment of his or her potential in a permanent, healthy, safe environment.” In Re: J.A.S., Jr., 2003 Pa. Super. 112, citing In the Interest of Lillie, 719 A.2d 327 (Pa. Super. 1998).

**A. 23 Pa. C.S.A. Section 2511(a)(2)**

A Court may terminate parental rights under section 2511 (a)(2) when:

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 of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

Accordingly, the Mother’s parental rights to the child, D.C., can be terminated under Section 2511(a)(2) of the statute. Credible testimony at the termination hearing was presented to show by clear and convincing evidence that the Mother did not remedy the conditions that gave rise to placement of the child.

The Petitioner offered the testimony of Robert Blaskie, a therapist who has worked at Northeast Counseling, Nanticoke, Luzerne County, Pennsylvania, for forty years in the outpatient department. Mr. Blaskie testified that he was familiar with the

Mother. She was a patient of his for 1 ½ years. The Mother apparently treated at Northeast Counseling due to several diagnoses that included psychotic disorder NOS, adjustment disorder with depressed mood, learning disability NOS and a provisional diagnosis of borderline intellectual functioning. Mr. Blaskie testified that initially, the Mother attended treatment at the counseling facility. However, in a letter dated October 12, 2011, Mr. Blaskie stated that while the Mother was cooperative, she had absolutely no insight. (N.T. of 5/8/13 at P. 22) She had very rigid beliefs. (N.T. of 5/8/13 at P. 23) She relayed a story of being a victim of the Agency and that she saw no reason for treatment. (N.T. of 5/8/13 at P. 23) While she treated at the facility, Mr. Blaskie indicated that she made no gains; (N.T. of 5/8/13 at P.23) she made no behavioral changes; and she did not make any intellectual changes. (N.T. of 5/8/13 at P. 23) The diagnoses that were originally made when she first came to the Agency, had not been remedied by the time she finished her course of treatment. (N.T. of 5/8/13 at P. 23)

Petitioner also offered the testimony of Sarah Luvender. Ms. Luvender is a licensed clinical social worker from Family Services Association, 31 West Market Street, Wilkes-Barre, Luzerne County, Pennsylvania. Ms. Luvender worked as a licensed clinical social worker for two years. She offered testimony that she was familiar with the Mother. Prior to her employment at Family Services Association, she worked as a community resource specialist at the Time Limited Family Reunification Program, offering parent education and case management for families involved with the Children and Youth system. She testified that as part of her job her goal was to put families back together (N.T. of 5/8/13 at P. 45). She worked at Time Limited Family Reunification for one year.



Ms. Luvender testified that the Mother was a client at the Time Limited Family Reunification Program (N.T. of 5/8/13 at P. 46). Ms. Luvender testified that she worked with parents, educating them, observing visits and even participated in the visits between parents and child. (N.T. of 5/8/13 at P. 47) Ms. Luvender testified that she spent “a good amount of time working with the Mother”. (N.T. of 5/8/13 at P. 47) Ms. Luvender worked with the Mother from October 28, 2010 through August 5, 2011. During that ten month period, the witness worked with the Mother doing parenting education curriculum, including nurturing, child safety, making good choices and reflecting on ideas of who we are as parents. There was a set curriculum called Nurturing Parent, and it covered the areas of safety, boundaries, child development, age appropriateness, and discipline. (N.T. of 5/8/13 at P. 48) The Mother met with Ms. Luvender once a week regularly (N.T. of 5/8/13 at P. 49). Ms. Luvender also testified that she had seven observed visits with the Mother and the child. (N.T. of 5/8/13 at P. 51)

Ms. Luvender prepared a closing summary relative to the Mother’s file on or about August 16, 2011. The report summarized the progress the Mother had made. There were six specific categories, namely, that the Mother was “graded” on. The Mother was graded, with respect to each category, on a scale from one to three; one being below the average or the norm; two being average or the expected norm or three being an above average or above norm score. In particular, the Mother scored a one on relevant responses, insight and report change.

When asked about this scoring, Ms. Luvender explained that while the Mother attended program regularly, she did not complete the program successfully because her responses weren’t relevant; her insight was not there and there was no change reported.

Ms. Luvender testified that there “was not much that was gained during the program”. (N.T. of 5/8/13 at P. 52) The witness testified that the responses of the Mother were often scattered or did not necessarily match the subject that was being discussed. The witness testified that while there was participation in the program, and while the Mother did express a great deal of love her for children, (N.T. of 5/8/13 at P. 57) there was no real reflection as to what the Mother may have done wrong along the way to get involved with the Children & Youth system, and she did not feel there was anything to change. (N.T. of 5/8/13 at P. 58-60) Ms. Luvender rationalized that “if you don’t have any insight into why it went wrong or what happened, you don’t really have the ability then to correct it or change it or make it better or different”. (N.T. of 5/8/13 at P. 61) Also, Ms. Luvender testified that staying on task was consistently difficult for the Mother. Ms. Luvender further stated that the parenting deficits that were there when the Mother first began the program were still there in August 2011. (N.T. of 5/8/13 at P. 52) None of the parenting issues were resolved, according to Ms. Luvender. (N.T. of 5/8/13 at P. 52 and P. 53)

Ms. Luvender observed seven visits between the Mother and the child at the Agency. (N.T. of 5/8/13 at P. 53) She stated that the Mother lacked insight and did not provide relevant responses to interactions. She stated the Mother lacked accountability for her past behavior. (N.T. of 5/8/13 at P. 53) Ms. Luvender stated that there was a lot of behavior during the parenting sessions that was bizarre and a bit irrational. Ms. Luvender felt that the behavior stemmed from a mental health issue. (N.T. of 5/8/13 of P. 53)

The Petitioner further offered the testimony of Kelly Horning from the May 8, 2013 proceeding. At that proceeding, Ms. Horning testified that she has been a children's caseworker for eight years. Currently, she is a Caseworker Supervisor at Children and Youth Services, located at 111 North Pennsylvania Boulevard, Wilkes-Barre, Pennsylvania 18702. She had been a supervisor of this case for a year and a half. Ms. Horning was familiar with the Mother as well as with D.C.

Ms. Horning testified that pursuant to the permanency plan, the Mother was ordered to attend parenting services. She was required to undergo a mental health evaluation and mental health services. A comprehensive family assessment for the Mother and the child was recommended as well as family counseling for the Mother and child, individual counseling for the Mother, and victims trauma counseling for the child. Also the Mother was required to maintain safe and stable housing and to cooperate and follow through with what was outlined in the family plan. In addition, there was a safety plan.

Ms. Horning testified that the placement of the child(ren) continued to be necessary and appropriate, due to the Mother's minimal level of compliance throughout the reporting period. (N.T. of 5/8/13 at P. 73-74) The Mother did not engage in any recommended services for the reporting period. She only attended supervised visits with her child(ren). (N.T. of 5/8/13 at P. 73, P. 74) The Mother did not appreciate the reasons for which counseling was mandated and did not continue the counseling sessions. *Id.* The Mother also failed to complete any mental health program during the last reported period. Furthermore, the Mother did not attend parenting classes in the latest period. The only reason that the Mother was given a "minimal compliance" grade was because she

attended the visits with the child(ren). (N.T. of 5/8/13 at P. 77) Ms. Horning testified that the Mother has not demonstrated any level of progress as the issues leading to placement remain unresolved and there has been no successful completion or benefit from any of the services that were recommended. (N.T. of 5/8/13 at P. 78)

In this case the family service plan was prepared at the minimum of once every six months. A copy was provided to the parent once every six months and they were adopted by the Court. All of the services that were required were contained in the family service plan.

Ms. Horning also noted that there was an Order from the Court signed on April 23, 2012, by The Honorable Jennifer Rodgers, Luzerne County Court of Common Pleas, compelling the Mother to identify a mental health provider, and to provide the name of that provider to the Agency so that the Agency could ensure that she was in outpatient mental health counseling. (N.T. of 5/8/13 at P. 74) The witness testified that while there was a letter written to the Agency by counsel for the Mother at the time identifying two potential counselors that the Mother had in mind, ultimately, the Mother never sought treatment with any of the proposed counselors. (N.T. of 5/8/13 at P. 76)

Ms. Horning testified that mental health counseling is crucial to achieve emotional stability in order to be able to participate in a parenting program and to achieve maximum benefit from that program, as well to achieve the emotional stability to engage in recommended family counseling with the child.

Ms. Horning agreed that the Mother loves her child (N.T. of 5/8/13 at P. 79) and initially that the goal of Children and Youth was to remedy the conditions that gave rise to the placement outside the home (N.T. of 5/8/13 at P. 79), however, Children and Youth

made available all services possible (N.T. of 5/8/13 at P. 80) to help this Mother reunify with her child, and the Mother was non-compliant. Ms. Horning testified that from April 2010 through November 2011, the goal was reunification with the Mother. The focus, however, changed in light of the Adoption and Safe Families Act. (N.T. of 5/8/13 at P. 80)

Mrs. Horning testified at the December 19, 2013 hearing as well. She confirmed that she has been supervising this case for two years. She explained to the Court that the Mother claims the natural father of the child is a man by the name "David" and that she was artificially inseminated. The Mother has never named any individual as the father other than this. (N.T. of 12/19/13 at P. 33) Mrs. Horning indicated that Children and Youth attempted to determine the paternity of the father, but the father is unknown to the agency. (N.T. of 12/19/13 at P. 34) Domestic Relations attempted to determine the father of this particular child on two occasions. (N.T. of 12/19/13 at P. 34) Introduced as P-1 at the December 2013 hearing, a letter from the Pennsylvania Bureau of Child Support Enforcement Paternity Tracking System, indicated that there was not any documentation whatsoever of any claim of paternity for D.C. A letter dated December 21, 2012 (the second search) indicated the same information. To date, no one has made a paternity claim concerning D.C. (N.T. of 12/19/13 at P. 34)

The current placement of D.C. occurred 44 months ago. The placement has been continuous. (N.T. of 12/19/13 at P. 39) The child was removed as a result of physical abuse, sexual abuse of two older siblings, deplorable housing conditions, parenting concerns of the natural Mother as well as very serious mental health concerns of the Mother.

Children and Youth conducted an investigation and at the end of the assessment period, the Agency did confirm that the two older children were the victims of sexual abuse by multiple paramours of the Mother; and the Mother was aware of the abuse occurring with the children. The Mother did not attempt to protect the children from this abuse. (N.T. of 12/19/13 at P. 39) With respect to D.C., there was a concern about physical discipline. For example, D.C. would be locked out of the house as a form of discipline. Also, D.C. was locked in a medium sized dog cage for extended periods of time as a form of punishment. (N.T. of 12/19/13 at P. 39-40) Also, the maternal grandparent of the minor would inappropriately discipline the child and his sibling; the Mother knew of it and did nothing to protect the child. (N.T. of 12/19/13 at P. 40)

Children and Youth then sought shelter care and that was granted by the Court. The child was then deemed dependent and the Mother was directed to attend certain services to help address the concerns of the Agency. (N.T. of 12/19/13 at P. 41) The natural Mother was directed to complete mental health assessment with Northeast Counseling and to follow any recommendation that was made. Also, the Mother was ordered to attend parenting program through Family Services Association Time Limited Family Reunification Parenting Program. The Mother and child were to complete a comprehensive family assessment also with Dr. Lenora Herrmann Finn.

Dr. Finn diagnosed the Mother and recommended that she participate in individual therapy, as well as any recommendations made for a medication management program. She recommended that once ~~Mother~~ had stabilized her mental health issues, that her and the child become engaged in Family Therapy Services. Children and Youth in its ordinary course of business receives expert reports and these types of reports

are reviewed and kept by Children and Youth as a business record used to conduct its duties in the cases its assigned. Therefore, a report of Dr. Finn, (marked P-3) was introduced at the December 2013 hearing. Mrs. Horning indicated that the Mother never followed any of the recommendations of Dr. Finn.

The Petitioner introduced P-4 which was a report of Dr. Sharma at Northeast Counseling Services. This report, Petitioner's P-4, was issued as a result of the psychiatric evaluation conducted by Dr. Sharma. Again, the witness testified that this was a report received in the ordinary course of business and it was reviewed and relied upon by the Agency in performing its duties. Dr. Sharma diagnosed the Mother with psychotic disorder, not otherwise specified, and a mixed adjustment disorder with depressed mood. The doctor recommended that the Mother participate in a medication management program and that she attended individual therapy.

The Petitioner introduced P-5, a document addressed to the Agency from Northeast Counseling Services by Robert Blaskie. This exhibit was relied upon by Children and Youth personnel to make its decisions concerning Mother and her child.

The Petitioner introduced P-6, a document entitled the closing summary report from the Time Limited Family Reunification Parenting Program, and authored by Sarah Luvender. There were specific recommendations made for the Mother. Mother was recommended to engage in the mental health services. Mother never complied with the recommendations. (N.T. of 12/19/13 at P. 47-48)

Kelly Horning testified that some 44 months after placement, the Mother was not able to remedy the mental health issues with which she was initially diagnosed. (N.T. of 12/19/13 at P. 48) Mrs. Horning also stated that the child could not be returned to the

Mother at this time because the Mother is "stuck on the placement of the children". The Mother voiced to the agency that there is nothing wrong with her; that all their reports are nonsense. Mother does not recognize the significance of her mental health issues, and that they have an impact on her ability to protect her children." (N.T. of 12/19/13 at P. 48)

Mrs. Horning testified that the child would not be safe if he were returned to the home because of the Mother's failure to comply with the recommendations for psychiatric evaluation. (N.T. of 12/19/13 at P. 48)

Turning next to the issues of parenting, Mrs. Horning testified that the Mother knew that the two older children of the Mother were being sexually abused and the others, including D.C., were being physically abused and she did nothing to stop the abuse or protect the children. The Mother perpetrated physical abuse on her son and saw no fault or inappropriateness of the conduct. She failed to protect her child and continues to deny that there are any issues with her parenting or her role in placement of the children. Therefore, the witness testified that the Mother would not be able to protect her children from further instances of abuse and neglect. (N.T. of 12/19/13 at P. 49) The Mother has not remedied the parenting deficits which were initially identified 44 months ago when the child was first placed. (N.T. of 12/19/13 at P. 49)

With regard to the family assessment performed by Dr. Finn, the issues identified by Dr. Finn were not remedied by the Mother. The family assessment would not be done until the Mother addressed her mental health issues. Although the agency attempted to make referrals for the service, the primary issue was the Mother's mental health



condition. If she was not enrolled in the course of mental health treatment, the family therapy would absolutely not be able to take place. (N.T. of 12/19/13 of P. 50)

The witness testified that Children and Youth was always given the same response from multiple sources who were asked to do the family therapy....that while the Mother's mental health issues were unresolved, she would not be able to be a positive contributor to the family therapy sessions. The child needed this counseling to be able to process what he had gone through.....he needed to be able to trust the Mother; and without the family therapy, that could not occur. (N.T. of 12/19/13 at P. 51) The family therapy could not be started until the Mother made certain progress with individual counseling, and she refused. Family therapy was to be with either Dr. Jeffrey Fremont or Mary Marin Counseling Services.

As stated herein, the Mother was given an opportunity by Judge Jennifer Rogers, Luzerne County Court of Common Pleas, Orphans Court, Judge Rogers to select a therapist of her own choosing. She gave the Mother ten days to provide the agency with the name of that counselor. No such counselor was identified by the Mother. (N.T. of 12/19/13 at P. 53) The Mother stated that she did not have any mental health problem. She never identified any mental health counselor. (N.T. of 12/19/13 at P. 53)

Mrs. Horning testified that the child could not be returned to the Mother because she failed to seek mental health counseling, she failed to resolve her parenting issues and she failed to go to family therapy. Further, the Mother continues to deny that she has any issues. According to Mrs. Horning, returning the child to the Mother would put the child in immediate risk of further instances of abuse. The safety concern is that she

won't even acknowledge the issues that led to placement. (N.T. of 12/19/13 at P. 54)

This is a safety concern. (N.T. of 12/19/13 at P. 55)

Mrs. Horning testified that the children have been in placement more than 12 months from the date of their removal; that the conditions which led to removal still exist; that termination of parental rights best serves the needs and welfare of the child; that the natural Mother has exhibited a continued incapacity or refusal to deal with a myriad of issues which places the child to be without essential parental care; that the Mother has not remedied those conditions; that the Mother cannot or will not remedy those situations and finally that the conditions that led to the removal will not be remedied within a reasonable period of time. The Mother has not ever made any progress to remedy the conditions that led to the removal. The Mother will not even acknowledge that any conditions exist. (N.T. 12/19/13 at P. 55-56.)

Mrs. Horning finally testified that the permanency plan is for adoption, established by the Court after a hearing on May 8, 2013 due to the noncompliance of the Mother for any recommended services. (N.T. of 12/19/13 at P. 57) Mrs. Horning testified that the Agency has made all efforts to finalize the goal of adoption. Children and Youth filed a petition to terminate parental rights; they identified an adoptive family; they registered the child with the State Wide Adoption Network; and offered adoption and caseworker counseling services to the child and the foster family. (N.T. of 12/19/13 at P. 58)

The natural Mother has not demonstrated any progress to alleviate the circumstances that gave rise to the placement of the minor child. The child is safe in their current placement setting. The foster Mother is Barbara D... The child is doing

well. He does not have any special needs. Barbara D... has identified herself as an adoptive resource for the child. The child has been in her placement for the 44 months.

Mrs. Horning stated that the child will have the permanency and the stability of a safe and stable home environment with all of the love and nurturing and support he deserves and needs. Barbara D... meets the physical needs of the child. She provides shelter, clothing and food, and the child has received the appropriate medical attention and immunizations. Barbara D... also meets the psychological and emotional needs of the child. (N.T. of 12/19/13 at P. 62)

Mrs. Horning further testified that the child was engaged in specialized trauma therapy at Valley Counseling, and Mrs. D... made sure he was present for every appointment. She has provided the child with support while going through this process. The child is ready to move on with his life. He successfully coursed out of the treatment session. Mrs. D... is very involved with the child's educational needs. She helps him do his homework. She encourages good study habits and insures that the child is in school. Finally, Mrs. D... meets the developmental needs of the child. She insures that the children stay involved in extra curricular activities outside of school that continues to support healthy growth. The child is very happy with this setting. (N.T. of 12/19/13 at P. 62-64)

The testimony of Sherry Hartman, a caseworker for the child, revealed that she has known the child since August 2012, serving as his caseworker. She observed the child with Barbara D... often. She sees the child on a monthly basis for two hours. Her contact with the child and Mrs. D... has been since August 2012.

Sherry Hartman provided the Court with information concerning the D. family. B. D. had a life time partner, J. H., who recently passed away on September 12, 2013. The child struggled with this, but he was helped with counseling. R. D., B.'s Mother, also resides in the home. There is A., who is 17 and J., who is 16; K., who is 15 and L., who is 14 along with D.C. who is 9. D.C. has been assimilated into this family. He is included in all family activities. (N.T. at 12/19/13 at P. 66) He receives medical, dental and eye care. D.C. wears glasses. The child is in the appropriate grade level. D.C. receives tutoring twice a week due to the fact that when he came into the care of the D. family, he could not read. He is doing well with this. (N.T. of 12/19/13 at P. 67) Mrs. D. meets all the needs of the child, including physical, dental, medical, developmental and emotional. There is a bond between her and the child, a parent/child bond. (N.T. of 12/19/13 at P. 68) Ms. Hartman indicated that the bond between the child and the natural Mother was more like a friendship bond. (N.T. of 12/19/13 at P. 68) She observed that the bond with the foster Mother and child is stronger. (N.T. of 12/19/13 at P. 68)

Ms. Hartman testified that if the Court were to terminate the parental rights of the Mother there would be no effect on the child. The child is committed to the adoptive family. He has asked that he be adopted. He wants this proceeding to move forward so that he can be a permanent part of the adoptive family. The caseworker testified that there would not be any negative detriment to the child. (N.T. of 12/19/13 at P. 69) Contact between the child and the Mother was suspended as a result of prior testimony and there has not been any negative detriment to the child. He does not even ask about her. (N.T. of 12/19/13 at P. 69)

Should the Court grant the Petitioner's petition, Mrs. DeLong has committed to adopting the child. That would be a positive effect. He would become a permanent part of a very caring, loving and nurturing family. As the child's caseworker, this would be in the child's best interests. This home is where the child should live. (N.T. of 12/19/13 at P. 70-71) The physical, psychological, emotional, educational and medical needs of the child are being met. (N.T. of 12/19/13 at P. 71)

Mrs. DeLong is aware that should she adopt the child, she would have a legal and financial obligation towards the child just as if the child were her own. Mrs. DeLong is also aware that should she die, the child is able to inherit from her as if the child were born to her. The child very much wishes to be adopted. (N.T. of 12/19/13 at P. 72)

It should be noted that while the Mother did not participate in the December hearing, she did offer testimony at the goal change hearing on May 8, 2013. The transcript was introduced and incorporated by reference at the December hearing. In May 2013, the Mother acknowledged seeing Dr. Finn. She actually saw her on 4 occasions, 12/14/10; 12/3/10, 1/11/2011 and 3/3/11, but the Mother did not agree with Dr. Finn's recommendations. The Mother testified that she completed individual mental health treatment before it was even Court ordered. (N.T. of 5/8/13 at P. 121) The Mother testified that she went to parenting classes beginning April 2012, but the testimony established that while the Mother may have inquired into parenting programs at certain facilities, (N.T. of 5/8/13 at P. 122) she did not go because she felt she already completed courses back in 2010 and she did not believe it was necessary to go every year. (N.T. of 5/8/13 at P. 123) Since April 2012, the Mother has not seen Dr. Fremont for individual counseling as well.

The Mother was not permitted unsupervised visitation because she was noncompliant with her recommended programs. (N.T. of 5/8/13 at P. 102) Mother failed to re-engage in her mental health treatment and to participate in a parenting program. (N.T. of 5/8/13 at P. 103)

The Court also had the opportunity to speak to D.C. at the goal change hearing, and to take his preference into consideration. The child stated that he wanted to be adopted. He hoped to have this matter concluded so that he could move on with his life.

D.C. was not present at the December 2013 hearing, but D.C.'s sister, L.C., spoke to the Court privately in Chambers. L.C. indicated, with regard to D.C., that he was doing good (N.T. of 12/19/13 at P. 4) and that the foster family (and children) are really well together....everything is going well...I really hope this termination goes through. (N.T. of 12/19/13 at P. 6)

Based on the testimony of Kelly Horning and Sherry Hartman, and after reviewing the transcript of the hearing conducted on May 8, 2013, and the evidence presented to this Court, the Court finds that subsequent to the placement of the child on April 6, 2010, Mother was not able to maintain adequate safe housing for the children and was unable to benefit from any of the services to address her parenting issues. Mother was initially having supervised visitation with the children. Before the Mother was allowed to have an increase of visits with the child, Mother was required to complete services. Mother was referred to mental health counseling and parenting classes.

Therefore, the Court finds that Mother has not been able to remedy the conditions that gave rise to the placement of the child which was mainly her failure to comply with the family service plan.

Unlike 23 Pa. C.S.A. Section 2511(a)(1), subsection (a)(2) does not emphasize a parent's refusal or failure to perform parental duties, but instead emphasizes the child's present and future need for essential parental care, control or subsistence necessary for his physical or mental well-being. Therefore, the language in subsection (a)(2) should not be read to compel Courts to ignore a child's need for a stable home and....this is particularly so where disruption of the family has already occurred and there is no reasonable prospect for reuniting it. In RE E.A.P., 944 A.2d 79(Pa. Super. 2008).

Given the overwhelming evidence and testimony, it is clear that Mother has received and/or has been offered extensive services over a period of years and that she has derived no benefit from these services.

At this juncture, the child's right to have proper parenting in fulfillment of HI potential in a permanent, healthy, safe environment outweighs Mother's interest. In Re: J.A.S., Jr., 2003 Pa. Super. 112, citing In the Interest of Lillie, 719 A.2d 327 (Pa. Super. 1998).

## **5. Discussion: Grounds for Termination for Mother**

### **A. 23 Pa. C.S.A. Section 2511 (a)(5)**

A Court may terminate the parental rights under Section 2511(a)(5) when:

The children has been removed from the care of the parent by the Court or under voluntary agreement with an agency for a period of a least six months, the conditions of which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

The Mother's parental rights may also be terminated under this provision of the Statute. Under 23 Pa. C.S.A. Section 2511(a)(5), the agency must show: 1) The conditions giving rise to placement continue to exist; 2) Those conditions will not be remedied in a reasonable period of time; and 3) Termination of parental rights would best serve the needs and welfare of the child. Accordingly, the Court will take one at a time:

(1) Conditions Continuing to Exist

The child was placed on April 6, 2010 due to an emergency shelter care Order issued by this Court. Therefore, the child has been removed for at least six months. It is also clear through the testimony outlined herein, that the natural Mother, has been unable to resolve the issues that gave rise to the placement of the minor child, i.e. inability and/or unwillingness to take responsibility for parenting her children and obtain counseling. The Mother did not comply with the permanency plan developed for the children nor did she make the necessary progress towards alleviating the circumstances that necessitated the placement of the children.

The Mother was unable to maintain a safe and stable housing and did not resolve her parenting issues. The overwhelming evidence shows that all of these issues have yet to be remedied and the Mother simply refuses to obtain mental health counseling as directed. While she has participated in parenting classes, she did not make any progress towards remedying the issues that led to the child's removal.

The Court has recognized this issue above in its analysis of Section 2511(a)(2) and finds the same consideration apply for Section 2511(a)(5) that have already been discussed extensively in this Memorandum. Furthermore, the Court applies this same



reasoning in concluding that the natural Mother failed to remedy the conditions that originally gave rise to placement of the minor children, D.C.

(2) Remedy of Conditions in Reasonable Time

Mother has had over 3 years to remedy the conditions, which gave rise to placement, yet the evidence shows that she has been unable to make any progress. Dr. Hermann-Finn concluded her evaluation of the Mother approximately at one year after placement found that ~~the~~ Mother still did not benefit from any services because Mother refused to admit that she has a problem with parenting and refused to attend mental health counseling. Mother continually views herself as the perfect parent who did not need any changing. This Court finds that Mother has been and is unable to remedy the conditions that gave rise to placement of the minor children within a reasonable time period.

(3) Needs and Welfare of the Child

The term "needs and welfare" of a child refers to both tangible and intangible needs. The intangible needs of a child include love, comfort, security and closeness. In re Matsock, 416 Pa. Super. 520, 611 A.2d 737, 747 (1992). There is nothing in the record that shows that the natural Mother is presently capable of providing a safe, secure environment for the minor children.

Parental duty is best understood in relation to the needs of a child. These needs, both physical and emotional, cannot be met by a mere passive interest in the development of the child. Meeting a child's needs is a positive duty that requires affirmative performance. In re Shives, 363 Pa. Super. 225, 525 A.2d 801, 802 (1987).

A parent is not relieved of his or her responsibility relating to the needs of a child when a child has been placed in foster care. A non-custodial parent has a duty to exert himself to take and maintain a place of importance in the child's life. In re Adoption of M.J. H., 348 Pa. Super. 65, 501 A.2d 648 (1985). A parent must demonstrate a continuing interest in the child and make a genuine effort to maintain communication and association with the child. In re Adoption of McCray, 331 A.2d 652 (Pa. 1975). Moreover, a parent with a child in foster care has an affirmative duty to work toward the return of the child. In Re: William L., 477 Pa. 322, 383 A.2d 1228 (1978).

When considering the needs and welfare of the child, it is also important for the Court to consider the bond between the parent and the child because severance of a strong parental bond can have a detrimental impact on the child. Matsock, *Supra*.

Petitioner presented credible testimony regarding the needs, welfare and best interest of the minor, D.C., in relation to their Mother. Petitioner introduced the testimony of Ms. Luvender who observed seven visits between the Mother and the child at the Agency. (N.T. of 5/8/13 at P. 53) She stated that the Mother lacked insight and did not provide relevant responses to interactions. (N.T. of 5/8/13 at P. 53) Ms. Luvender stated that there was a lot of behavior during the parenting sessions that was bizarre and a bit irrational. Ms. Luvender felt that the behavior stemmed from a mental health issue. (N.T. of 5/8/13 of P. 53)

The testimony of Sherry Hartman, a caseworker for the child, revealed that she has known the child since August 2012, serving as his caseworker. She observed the child with B: . D: often. She sees the child on a monthly basis for two hours. Her contact with the child and Mrs. D: , has been since August 2012.

Sherry Hartman provided the Court with information concerning the D.C. family. B. D. ; had a life time partner, J. H. , who recently passed away on September 12, 2013. The child struggled with this, but he was helped with counseling. R. D. , B. 's Mother, also resides in the home. There is A. who is 17 and J. , who is 16; K. , who is 15 and I. , who is 14 along with D.C. who is 9. D.C. has been assimilated into this family. He is included in all family activities. He receives medical, dental and eye care. D.C. wears glasses. The child is in the appropriate grade level. D.C. receives tutoring twice a week due to the fact that when he came into the care of the Durling family, he could not read. He is doing well with this. Mrs. D. meets all the needs of the child, including physical, dental, medical, developmental and emotional. Mrs. Hartman testified that the bond between the child and the foster parent was the bond that exists between a parent and child, but that the bond that the child had with the natural Mother was more like a friendship bond. (N.T. of 12/19/13 at P. 68)

The Petitioner also presented testimony regarding the problems the child was initially having as a result of the abuse. The child was removed from a home where two older children were being sexually abused, and the Mother knew of the abuse, and did nothing to protect the children. Moreover, the child was subject to abuse by a grandparent. The Mother knew of the abuse and did nothing to protect against it. With respect to D.C., there was a concern about physical discipline. For example, D.C. would be locked out of the house as a form of discipline. Also, D.C. was locked in a medium sized dog cage for extended periods of time as a form of punishment.

The testimony established that when the child stopped having contact with his Mother, there was no negative effect. The child does not talk about his Mother and does not want to go back to her. If the court would terminate the Mother's parental rights, the testimony revealed that this would not have a negative effect on the child. In fact, if the court should permit the adoption by the foster parent, the adoption would have a positive effect on the child. The child wishes to be adopted by his foster parent.

Accordingly, the Court finds that the termination of Mother's parental rights would best serve the needs and welfare of the child.

#### **6. Discussion: Grounds for Termination For Mother**

A. 23 Pa. C.S.A. Section 2511 (a)(8)

A Court may terminate the parental rights under Section 2511(a)(8) when:

The child has been removed from the care of the parent by the Court  
Or under voluntary agreement with an agency, twelve (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 would best serve the needs and welfare of the child.

Parental rights may be terminated under this provision of the Statute. Under 23 Pa. C.S.A. Section 2511(a)(8), the agency must show: 1) The child has been removed for at least twelve (12) months. 2) The conditions that gave rise to placement continue to exist, and 3) Termination of parental rights would best serve the needs and welfare of the child.

##### (1) Time Period for Removal of Child

It is undisputed that the minor child, D.C. has been removed from the custody of Mother since April 2010. Accordingly, this removal has persisted well in excess of the statutorily required twelve (12) months since the date of the child's placement. Thus, the

requisite minimum of at least twelve (12) months from removal of the minor children from the Mother has elapsed so as to comply with this section of 2511(8).

(2) Conditions Continuing To Exist

The conditions that led to the children's removal from the Mother's care and into placement were Mother's inability and unwillingness to take responsibility for the care and maintenance of her minor child, D.C., and her inability to provide and maintain safe, stable and adequate housing. The Court has performed the above extensive analysis in taking testimony and finding credible evidence in concluding that Mother failed to derive any benefit from services and unwillingness to participate in counseling to comply with the developed permanency plan. Therefore, the conditions that gave rise to placement continue to exist.

In discussing and finding that Mother's conditions continue to exist, the Court incorporates its reasoning and the testimony of all witnesses already discussed in this Memorandum found in the section addressing 23 Pa. C.S. Section 2511(a)(2).

(3) Needs and Welfare of the Child

Once the Court has found that involuntary termination of parental rights is warranted under the Act, the Court must then "give primary consideration to the developmental, physical and emotional needs and welfare of the child."

The Court has done this and finds the same considerations apply that have already been discussed extensively in this Memorandum. Furthermore, the Court applies the same reasoning for concluding that these needs will be served by the termination of Mother's parental rights.

7. Additional Considerations Under 23 Pa. C.S.A. Section 2511(b)

A. FOR MOTHER

1. ENVIRONMENTAL FACTORS

Title 23 Pa. C.S.A. Section 2511(b) specifies that a Court may not terminate the parental rights “solely on the basis of environmental factors such as inadequate housing, furnishings, clothing, and medical care if found to be beyond the control of the parent.”

As “environmental factors beyond the control of Mother” was not the linchpin in the placement of the minor children and because of the presence of other, independent factors utilized in the placement of D.C., this consideration does not apply and will not be addressed.

B. Needs and Welfare of the Child

Once the Court has found that involuntary termination of parental rights is warranted under the Act, the Court must then “give primary consideration to the developmental, physical and emotional needs and welfare of the child.” This is to be a separate inquiry and even where the Court has already considered the needs and the welfare of the child under one of the grounds of termination, the Court must do so again. *In re Matsock*, 611 A.2d 738 (1992).

The Court has done this and finds the same considerations apply that have already been discussed extensively in this memorandum. Furthermore, the Court applies the same reasoning for concluding that these needs will be served by the termination of the Mother’s parental rights.

**8. Adoption and Safe Families Act (ASFA) Considerations**

The Pennsylvania Superior Court relied upon the Adoption and Safe Families Act, ASFA, in *In re Z.P.*, 994 A.2d 1108 (Pa. Super. 2010). The goal of the ASFA was described as follows:

Succinctly, this means that when a child is placed in foster care, after reasonable efforts have been made to reestablish the biological relationship, the needs and welfare of the child require CYS and foster care institutions to work toward termination of parental rights, placing the child with adoptive parents. It is contemplated this process realistically should be completed within 18 months. *Id.* At 1119-1120, citing *In re G.P.*, 851 A.2d 967, 975-976 (Pa. Super. 2004).

The Court also provided that “above all else....adequate consideration must be given to the needs and welfare of the child....A parent’s own feelings of love and affection for a child, alone, do not prevent termination of parental rights.” *Id.* At 1121 (internal citation omitted).

In reversing the trial Court and terminating the natural parent’s parental rights, the Superior Court held:

ASFA related policies no demand reasonable efforts within a reasonable time to remedy parental incapacity. *Z.P.* has already been in foster care for the first two years of his life, and his need for permanency should not be suspended, where there is little rational prospect of timely reunification.” *Id.* At 1125-6.

These ASFA related policies are applicable in the present case of the minor child, D.C. The child has been in placement since April 6, 2010, more than a three (3) year period. Accordingly, a reasonable time of 18 months has long expired to remedy parental incapacity and there is little rational prospect of the timely reunification of D.C. to his Mother.

## 9. Conclusion

Finally, the Court notes that the Guardian Ad Litem expressed on the record, after having been present for all the testimony and evidence, his belief that the Petitioner has sustained its burden of proof by clear and convincing evidence and that the parental rights of Mother be terminated as it is in the minor's best interest to be free for adoption. The Guardian Ad Litem expressed that throughout his entire involvement with the child, the Mother has in no way demonstrated compliance of any sort. He stated that the child is doing quite well in the foster home and that he very much deserves a new family.

This Court agrees and finds that the Mother cannot offer to her child the basic physical, developmental and emotional needs that her child requires throughout his future life. Mother has been given ample time to address and remedy her problems, but has failed to successfully do so. The Court finds that the Mother is not able to meet her child's needs. In stark contrast, the foster parent has amply demonstrated she could meet the physical, developmental and emotional needs of the child and that the minor, D.C., has thrived under her care. The child needs and deserves a permanent home with a loving and capable parent. The only way to provide this is to terminate the rights of the Mother. Clearly, it is in the child's best interest to do so.

BY THE COURT:

  
\_\_\_\_\_  
LESA S. GELB, JUDGE

DATE: 4/27/14