

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: S.M.F.-B. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
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APPEAL OF: M.L.B., JR., FATHER : No. 233 EDA 2014

Appeal from the Order Entered December 17, 2013
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): CP-51-AP00000234-2011
CP-51-DP-0123505-2009
FID 51-FN-471009-2009

IN THE INTEREST OF: M.A.F.-B. : IN THE SUPERIOR COURT OF
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APPEAL OF: M.L.B., JR., FATHER : No. 234 EDA 2014

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Family Court at No(s): CP-51-AP00000233-2011
CP-51-DP-0123504-2009
FID 51-FN-471009-2009

BEFORE: GANTMAN, P.J., ALLEN, J. and FITZGERALD, J.*

MEMORANDUM BY GANTMAN, P.J.: **FILED JULY 16, 2014**

Appellant, M.L.B., Jr. ("Father"), appeals from the orders entered in the Philadelphia County Court of Common Pleas, which involuntarily terminated his parental rights to his minor children, S.M.F.-B. and M.A.F.-B. ("Children"). We affirm.

In its opinion, the trial court fully and correctly set forth the relevant

*Former Justice specially assigned to the Superior Court.

facts and procedural history of this case. Therefore, we have no reason to restate them. Father raises two issues for our review:

DID THE DEPARTMENT [OF HUMAN SERVICES (“DHS”)] SUSTAIN [ITS] BURDEN THAT FATHER’S RIGHTS SHOULD BE TERMINATED?

DID THE TRIAL COURT ERR IN DETERMINING THAT IT WAS IN THE BEST INTEREST OF CHILD[REN] TO TERMINATE FATHER’S PARENTAL RIGHTS?

(Father’s Brief at 4).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Edward C. Wright, we conclude Father’s issues merit no relief. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (**See** Trial Court Opinion, filed March 5, 2014, at 18-19; 21-28) (finding: **(1)** termination of Father’s parental rights was proper under Section 2511(a)(1), (2), (5), and (8), but court focused its analysis on Section (a)(1); in six months preceding filing of petition for involuntary termination of Father’s parental rights, Father failed to comply with Family Service Plan (“FSP”) goals;¹ Father did not comply with court-ordered drug and alcohol programs; Father did not complete Family School, failed to obtain appropriate housing in timely manner, and did not attend Children’s

¹ Father’s FSP goals included: (1) maintaining visitation with Children; (2) obtaining and maintaining appropriate housing; (3) meeting regularly with agency social workers; (4) cooperating with home evaluations; (5) making himself available to sign any forms requiring parental consent; (6) following recommendations of the Clinical Evaluation Unit; and (7) maintaining employment to provide income for Father’s family.

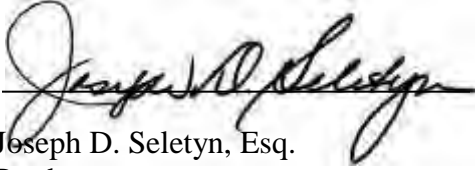
medical appointments, educational meetings, or attend scheduled supervised visits at agency; Father did not obtain unsupervised visits during four years Children were in custody of DHS; Father failed to utilize available resources; Father's lack of action indicated his intent to relinquish parental rights and refusal or failure to perform parental duties; Father has history of drug abuse and his failure to complete drug and alcohol treatment is disturbing; Father's inability to accept that Children have special needs was also disconcerting; nothing in record demonstrated Father can provide for Children; **(2)** under Section 2511(b), evidence showed Children would not suffer irreparable harm if court terminated Father's parental rights; Children have no beneficial relationship with Father; relationship between Children and maternal grandparents is akin to parents and children; testimony of DHS caseworkers was credible; DHS sustained its burden by clear and convincing evidence).² Accordingly, we affirm on the basis of the trial court's opinion.

Orders affirmed.

² Father also complains the court failed to consider Children's relationship with their other siblings who reside with Children's mother. Father failed to raise this issue in his concise statement and did not raise this claim at the termination hearing; thus, this issue is waived. **See Commonwealth v. Castillo**, 585 Pa. 395, 403, 888 A.2d 775, 780 (2005) (holding issues not raised in Rule 1925(b) statement are waived on appeal); **In re L.M.**, 923 A.2d 505 (Pa.Super. 2007) (applying Rule 1925 waiver standards in family law context). **See also** Pa.R.A.P. 302(a) (stating issues not raised in trial court are waived and cannot be raised for first time on appeal).

J-S43001-14

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line through the middle.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/16/2014

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
FAMILY COURT DIVISION
JUVENILE BRANCH

2014 MAR -5 PM 11:17

IN THE INTEREST OF: S.F.-B., A MINOR	: COURT OF COMMON PLEAS : CP-51-DP-0123505-2009 : CP-51-AP-0000234-2011 : SUPERIOR COURT DOCKET : 233 EDA 2014
APPEAL OF: M.B., FATHER	
IN THE INTEREST OF: M.F.-B., A MINOR	: COURT OF COMMON PLEAS : CP-51-DP-0123504-2009 : CP-51-AP-0000233-2011 : SUPERIOR COURT DOCKET : 234 EDA 2014
APPEAL OF: M.B., FATHER	
IN THE INTEREST OF: S.F.-B., A MINOR	: COURT OF COMMON PLEAS : CP-51-DP-0123505-2009 : CP-51-AP-0000234-2011 : SUPERIOR COURT DOCKET : 255 EDA 2014
APPEAL OF: S.D.F., MOTHER	
IN THE INTEREST OF: M.F.-B., A MINOR	: COURT OF COMMON PLEAS : CP-51-DP-0123504-2009 : CP-51-AP-0000233-2011 : SUPERIOR COURT DOCKET : 250 EDA 2014
APPEAL OF: S.D.F., MOTHER	

OPINION

Father, M.B., and Mother, S.D.F., appeal this Court's December 17, 2013 Orders, which involuntarily terminated their respective parental rights to their children, M.F.-B., born in 2009, and S.F.-B., born in 2007 (hereinafter collectively "the children"), and which changed the children's permanency goal to adoption. For the reasons discussed below, this Court's decision should be affirmed.

I. Procedural History

On September 29, 2009, the subject family became known to the Department of Human Services ("DHS" or "the department") when DHS received a Child Protective

Services ("CPS") report alleging that the children were the victims of medical negligence on the part of Mother. It was reported that S.F.-B, who was five (5) months old at that time, had received minimal health care since she was approximately eleven (11) days old. The report alleged that S.F.-B. lacked immunizations and was diagnosed as failure-to-thrive. S.F.-B. was last examined at Children's Hospital of Philadelphia ("CHOP") on November 13, 2009, at which time the child languished in the 0.5 percentile on the growth chart. The report further alleged that M.F.-B. was hearing impaired and had a severe speech delay. Mother failed to schedule an audiologist appointment for M.F.-B., and did not obtain early intervention services through ChildLink. Mother appeared to be mentally delayed and/or depressed. During a medical appointment, Mother failed to prevent S.F.-B. from falling from the examination table whereupon S.F.-B. sustained a bruise to the left side of her forehead.. The report was indicated.

On December 1, 2009, DHS implemented In-Home Protective Services ("IHPS") through Wordsworth Academy, which services were discharged on December 24, 2009. On December 7, 2009, DHS transported the family to the Eliza Shirley House. A safety plan was developed whereby Mother and the children would remain at the shelter. Prior to entering the shelter, Mother and the children had resided with the children's maternal grandparents, T.B. and R.B., and the children's paternal grandmother, T.W.

On December 8, 2009, Mother and the children voluntarily left the Eliza Shirley House and began residing at 6141 Irving Street, the residence of the paramour of the children's maternal aunt. DHS subsequently visited 6141 Irving Street and observed: that the residence was overcrowded; that there were no appropriate sleeping areas for the children; and, that numerous people were in-and-out of the residence. On several

occasions, there was no food or infant formula in the home for the children. Mother stated that she did not feed S.F.-B. baby food because the child rejected the baby food.

On December 11, 2009, a safety plan was developed which indicated: that Mother and the children were to remain at 6141 Irving Street; that DHS would provide beds for the children; and, that with the assistance of IHPS, Mother would comply with the children's medical care. Mother was diagnosed with Oppositional Defiant Disorder ("ODD") and depression. DHS offered mental health services to Mother. However, Mother refused to accept said services. DHS noted that Mother has poor parenting skills. DHS made a referral for family school and Mother agreed to accept services. On December 14, 2009, DHS provided Mother with fifty dollars (\$50) in Target gift cards to purchase food and supplies for the children. Subsequently, Mother was unable to produce receipts showing what food and supplies she had, if fact, purchased for the children.

On December 22, 2009, DHS and a DHS nurse, Kathy Torresi, visited 6141 Irving Street. It was observed that there was no food and that there was an inadequate amount of infant formula in the residence. S. F.-B. had lost six (6) ounces in the past five (5) weeks and had dropped down to the 0.3 percentile on the growth chart. DHS also observed numerous people going in-and-out of the residence. Mother stated that twelve (12) people resided in the residence.

On December 22, 2009, DHS obtained an Order of Protective Custody ("OPC") for M.F.-B. and S.F.-B., and both children were placed in the care of the maternal grandparents, T.B. and R.B. On December 24, 2009, a shelter care hearing was held. The Court lifted the OPC and ordered that the temporary commit to DHS stand. The Court formally learned that M. F.-B. and S. F.-B. resided with the maternal grandparents. DHS

was ordered to refer maternal grandparents, K.F. and R.B., for kinship care. Mother and Father were referred to the Clinical Evaluation Unit ("CEU") for an assessment and forthwith drug screen, and Mother was referred for a dual diagnosis. Mother was granted supervised visits in the home of the maternal grandparents. Father was granted supervised visits at the agency.

On December 29, 2009, an adjudicatory hearing was held. The Court adjudicated the children dependent and committed them to DHS. The Court ordered that M.F.-B. be tested for lead and referred the child for a hearing test. DHS was further ordered to refer the children for ChildLink evaluations. Father was granted supervised visits at the agency. Mother was granted liberal supervised visits in the home of maternal grandparents. Father was re-referred to the CEU for an assessment and drug screen, and further ordered to comply with CEU recommendations. Mother was referred to the behavioral health system ("BHS") for appropriate behavioral health intervention. DHS was ordered to refer Mother for a parenting capacity evaluation. Mother and Father were referred to Family School and the Achieving Reunification Center ("ARC").

On January 8, 2010, the children were placed in kinship care through a Second Chance, Inc. The children remained in the home of maternal grandparents.

On April 13, 2010, a permanency review hearing was held. Mother was ordered to comply with her FSP objectives. The Court learned that M.F.-B. was receiving ChildLink services and that S.F.-B. was not recommended for services. Mother's supervised visits were to continue. Mother was ordered to comply with her FSP objectives. Father was re-referred to the CEU for an assessment and forthwith drug screen.

On January 13, 2010, the initial Family Service Plan (FSP) was held. The children's permanency goal was reunification with the parents. The parental objectives established were: (1) that Mother and Father are to maintain visitation; (2) that Mother and Father are to obtain and maintain appropriate housing with suitable space, heat and all operable utilities; (3) that Mother and Father will meet regularly with the agency social worker and follow through with the ISP; (4) that Mother and Father will cooperate with a home evaluation; (5) that Mother and Father will make themselves available to sign any forms requiring parental consent; (6) that Mother will participate in family school to gain additional knowledge in parenting; (7) that Mother will participate in a mental health evaluation; (8) that Mother will enroll in a GED program or job training program; (9) that Father will follow the recommendations of the CEU; (10) that Father will maintain employment in order to provide income for the family, and, (11) that Mother will participate in a parenting capacity evaluation. Mother and Father participated in and signed off on the FSP meeting.

On September 3, 2010, a permanency review hearing was held. The Court learned that M.F.-B. was receiving early intervention services for speech therapy and receiving services through the Center for Autism. The Court learned that Mother was referred twice to the ARC. The Court learned that Father was no longer employed, whereupon the Court referred Father to the CEU for a forthwith drug screen and an assessment. Father was ordered to participate the in children's medical appointments. Father was ordered to comply with the CEU and all appropriate services.

On February 1, 2011, a permanency hearing was held. Father was re-referred to the CEU for assessment and screen. DHS was ordered to re-refer Father to ARC. There

were no visits from Father since the last court hearing. Father had only made minimal progress toward alleviating the circumstances which necessitated his children's placement.

On April 13, 2011, another FSP meeting was held. The children's permanency goal was changed to adoption. The parental objectives remained the same as previously reported. Father participated in and signed off on the FSP meeting.

On October 12, 2011, a permanency hearing was held before the Honorable Donna M. Woelpper. Both children remained in kinship with their maternal grandparents through Delta Community Supports. The Court made findings that the parents were to have bi-weekly supervised visits at the agency and that Father was non-compliant with the CEU and its recommendations. The Court ordered that Father be re-referred to the CEU for a forthwith drug screen and assessment. The Court ordered that the Termination of Parental Rights petitions filed by DHS as to both parents be held in abeyance. The next court date was listed for either a contested goal change termination or Permanent Legal Custody ("PLC").

On November 11, 2011, the last FSP meeting was held. The children's goal remained adoption. The parent's respective FSP goals remained the same. Mother and Father failed to attend or participate in the FSP meeting.

On February 17, 2012, a permanency review hearing was held before this Court. Both parents were present for the hearing. The Court made the following findings as to Mother: that she was discharged from ARC for non-compliance; that she was referred to JFK, MEDNET, and Consortium for mental health treatment but was discharged for non-compliance; that she was discharged from family school for non-attendance; and, that she

failed to complete parenting. With respect to Father, there was a report of non-compliance from the CEU that he was discharged from drug and alcohol treatment for non attendance. However, Father was employed and had completed parenting classes. The Court found that Father's FSP compliance level was minimal.

On December 17, 2013, this Court held a termination hearing wherein this Court granted the DHS's petition for involuntary termination of both parents' respective parental rights, terminated Mother and Father's legal rights to the children, and changed the children's permanency goal to adoption.

On January 15, 2014, Mother timely appealed this Court's December 17, 2013 Orders, which appeals the Superior Court of Pennsylvania ("Superior Court") consolidated and docketed at 250 EDA 2014 and 255 EDA 2014. Simultaneously therewith, on January 15, 2014, Mother filed her Statement of Matters Complained of on Appeal. Therein, Mother raises five (5) issues, to wit:

1. DHS [has not] followed up with home visits.
2. The first DHS worker stated no social services [were] required to invest[igate].
3. DHS [has not] had accurate dates on visits and requirements for fsp.
4. DHS never made sure if calendar visits were mailed out.
5. BHS never followed through with Therapist [appointments].

Mother's Statement of Matters Complained of on Appeal 1925(b), 1/15/14.

On January 16, 2014, Father timely appealed this Court's December 17, 2013 Orders, which appeals the Superior Court consolidated and docketed at 233 EDA 2014 and 234 EDA 2014. Simultaneously therewith, on January 16, 2014, Father filed his Statement of Matters Complained of on Appeal. Therein, Father raises two (2) issues, to wit:

1. Whether the trial court erred and/or abused its discretion by entering an order, on December 17th, 2013, involuntarily terminating father's parental rights where such a finding was not supported by clear and convincing evidence establishing grounds for termination under the Adoption Act, 23 Pa. C.S.A. § 2511(a)(1)(2)(5) and (8)[.]
2. Whether the trial court erred and/or abused its discretion by entering an order, on December 17th, 2013, involuntarily terminating father's parental rights and changing the permanency goal from reunification to adoption without giving primary consideration to the development, physical and emotional needs and best interest of the child as required by the Adoption Act, 23 Pa. C.S.A. § 2511(b)[.]

Father's Statement of Matters Complained of on Appeal 1925(b), 1/16/14.¹

II. Statement of Facts

In support of the termination of both parents' respective parental rights petitions, DHS presented the testimony of three (3) witnesses, along with numerous documentary exhibits. This Court found the evidence offered in support of the respective petitions to be credible. At the time of the December 17, 2013 termination hearing S.F.-B. was four (4) years old and M.F.-B was six (6) years old.

Jillian Johnston, the assigned DHS social worker, testified at the termination hearing that she was the first assigned worker to the children's case in December of 2009. (N.T., 12/17/13, pg. 8). At that time, S.F.-B. was eight (8) months old and M.F.-B. was two (2) years old. Ms. Johnston testified that DHS implemented In-Home Protective Services ("IHPS") to assist the family with stabilization. Ms. Johnston testified that the home was not appropriate due to the lack of appropriate sleeping arrangements for the children. At that time, prior to the children being removed from the home, there were twelve (12) people living in the three (3) bed room residence. (N.T., 12/17/13, pg. 44).

¹ This Court will address Mother and Father's claims on appeal simultaneously in Section III of this Opinion.

Ms. Johnston testified that she removed Mother and the children from the residence and placed them in a shelter. (N.T., 12/17/13, pg. 43-44). Ms. Johnston further testified that Mother returned back to the residence with the children shortly after being placed at the shelter. After Mother left the shelter, Ms. Johnston testified that she again visited the residence and once again had to remove the children because of continuing safety concerns thereat. Id. at 8. Ms. Johnston testified that there was minimal food in the home. Furthermore, Ms. Johnston testified that she spoke with Mother during this most recent visit, and at that time M.F.-B. only had a bowl of noodles to eat and S.F.-B. did not have any formula. Id.

Ms. Johnston obtained an OPC for both children because of her concerns with their safety and general well-being. Ms. Johnston also testified that S.F.-B. was severely underweight and had been diagnosed as failure to thrive. (N.T., 12/17/13, pg. 9). Ms. Johnston testified that M.F.-B. had speech limitations and that she was concerned that the child had hearing impediments. Mother repeatedly failed to follow through with both of the children's medical appointments, and she failed to address both M.F.-B.'s limited hearing issue and S.F.-B.'s immunizations. (N.T., 12/17/13, pg. 9).

The children were placed with the maternal grandfather R.B; the children have remained there since their original placement. Ms. Johnston testified that an initial FSP was held on January 13, 2010. Mother's objectives were: to visit the children; to obtain housing; to attend family school; to obtain a GED; to obtain job training; and, to comply with the mental health evaluation and the parenting capacity evaluation. Ms. Johnston testified that DHS referred Mother to the Achieving Reunification Center ("ARC") to receive assistance with her FSP objectives. Mother did not successfully follow through

with ARC, and was eventually discharged. Although Mother went for the initial intake, she did not comply with ARC's recommendations. Ms. Johnston testified that Mother did not complete parenting classes and did not attend family school. (N.T., 12/17/13, pg. 10-11). On May 20, 2010, Mother was re-referred to parenting and family school. However, Mother did not attend ARC.

Ms. Johnston further testified that Mother initially did not have housing. (N.T., 12/17/13, pg. 12). Although Mother was referred to the housing program through ARC, she did not avail herself of those resources. However, Mother did comply with the Court's Order for a parenting capacity evaluation. Ms. Johnston testified that the parenting capacity evaluation recommended that Mother receive individual therapy and attend parenting classes. (N.T., 12/17/13, pg. 13). Mother was referred for those services through ARC. Mother was also referred to the ARC for educational and job training programs, which were part of her FSP objectives. Ms. Johnston testified that she repeatedly referred Mother to the ARC and provided her with transportation, but Mother again failed to follow through. (N.T., 12/17/13, pg. 14).

With regard to visitation with the children, Ms. Johnston testified that the parents had supervised visits at the agency and liberal supervised visits with the maternal grandparents. (N.T., 12/17/13, pg. 14). Ms. Johnston testified that Mother attended minimal visits. Ms. Johnston testified that in total Mother attended three (3) supervised visits at the agency from the time the children were placed in DHS custody until the termination hearing. (N.T., 12/17/13, pg. 15). Ms. Johnston testified that Mother did attend the supervised visits at the maternal grandparents' residence. Ms. Johnston testified that Mother eventually completed parenting classes on May 18, 2011, and that

Mother had recently obtained housing. Ms. Johnston stated that she evaluated Mother's new residence on December 11, 2013, which was six (6) days before the termination hearing. Ms. Johnston testified that the residence is appropriate and that it could accommodate both children. However, Ms. Johnston further testified that Mother never completed the parenting capacity's recommendation for individual therapy and that Mother did not complete family school. Id. at 16.

Ms. Johnston testified that she conducted the last FSP on November 22, 2013. Both parents failed to attend this meeting, but Ms. Johnston met with both parents after that date and reviewed the FSP with them. (N.T., 12/17/13, pg. 18). At the last FSP meeting Mother's objectives were to complete a mental health evaluation, to maintain visitation, to obtain employment and/or job training, to obtain a GED, and to attend the children's medical appointments. Ms. Johnston testified that Mother failed to complete her mental health evaluation, did not obtain employment, and did not complete a job training course or GED program. Ms. Johnston testified that she notified Mother several times about the children's medical appointments but that Mother only attended one (1) medical appointment. Id. at 20.

Ms. Johnston testified that she was concerned with Mother's failure to complete family school. Ms. Johnston stated that the family school's hands-on therapeutic program would have been beneficial for Mother. Ms. Johnston testified that at the time of placement, M.F.-B. had special needs and S.F.-B. was very young. Mother could have learned appropriate responses and parenting methods at family school. Id. at 21. Ms. Johnston also testified that she was concerned with Mother's failure to complete the mental health evaluation because both children are considered to have special needs;

DHS would like to know that Mother's mental health is stable enough to care for children with special needs. Most importantly, Ms. Johnston testified that she is concerned with the fact that both children have special needs. Specifically, M.F.-B. has been diagnosed with Autism and, S.F.-B. is speech delayed. However, Mother does not believe there is anything wrong with either child. Mother has never attended a meeting at the Center for Autism to address her children's concerns. Mother still feels that there is nothing wrong with M.F.-B. (N.T., 12/17/13, pg. 22).

Ms. Johnston also testified that Father's FSP objectives in 2010 were to maintain visitation, to obtain housing, to maintain employment, to attend a CEU evaluation and follow through with recommendations, to complete the family school program, and to attend the children's medical appointments. (N.T., 12/17/13, pg. 22). Ms. Johnston testified that in 2010, Father did not have housing and resided with Mother. The parent's housing at that time could not accommodate both children. Father was referred to the ARC program for assistance with obtaining housing. Ms. Johnston testified that Father attended but did not complete the housing program. Ms. Johnston further testified that Father recently informed DHS of new housing, but that Ms. Johnston has not been able to assess the residence's appropriateness. In terms of Father's employment, Ms. Johnston testified that Father was employed at the onset of the case but later lost his job. Father has been employed sporadically, but for the majority of the children's case Father was unemployed. However, Ms. Johnston stated that Father is currently employed.

Father was referred to the CEU and recommended for drug and alcohol treatment. (N.T., 12/17/13, pg. 26). Ms. Johnston testified that Father did not follow through with the recommended drug treatment. Ms. Johnston testified that Father had positive drug

screens. Ms. Johnston stated that in 2010, Father tested positive for drugs such as marijuana, benzos, and opiates. Ms. Johnston testified that Father had not provided a drug screen in over a year. She stated that Father's last drug screen was in 2012, when he tested positive for marijuana. Id. at 27. Ms. Johnston testified that Father attended two (2) family school program sessions back in 2010, but did not complete either program. Father was re-referred to family school after failing to participate previously, but he was again subsequently discharged for lack of attendance.

Father had supervised visits with the children at the agency and supervised visits with the maternal grandparents. (N.T., 12/17/13, pg. 28). Ms. Johnston testified that Father did not attend visits at the agency. She also testified that Father's visits with the children at the maternal grandparents' home were sporadic. Father did not give Ms. Johnston a reason for not attending the visits. Id. Ms. Johnston testified she held the most recent FSP in 2013, whereupon Father's FSP objectives were to maintain employment, to obtain housing, to visit with the children, to attend a CEU evaluation and follow all recommendations, and to attend the children's medical appointments. Ms. Johnston testified that Father complied with his employment requirement but has not complied with the necessary drug and alcohol treatment. Ms. Johnston also testified that Father did not attend the children's medical appointments. Ms. Johnston is concerned with Father's failure to comply with the drug and alcohol treatment and possible continued substance abuse. Ms. Johnston testified that since Father did not participate in a CEU evaluation, it is hard to predict Father's degree of substance abuse. Id. at 30. Furthermore, Ms. Johnston is concerned that similar to Mother, Father does not believe that his children have special needs requiring special services.

Ms. Johnston testified that she is concerned with the parents' ability to properly care for their children due to their special needs. Id. at 31. She testified that the children need more attention and special services than your average children that develop appropriately. M.F.-B. completed the Center for Autism program and does receive special services through the school setting. M.F.-B. has a current IEP and is diagnosed as autistic. Id. Ms. Johnston testified that neither parent has attended any of the school meetings with respect to the children's IEP or special services. Ms. Johnston testified that the parents were informed of all the meetings, however they did not attend any meetings. Because the parents did not attend any educational meetings, the maternal grandparents were made educational surrogates. (N.T. 12/17/13, pg. 31-32). S.F.-B. received Early Intervention Services through Elwyn's Seeds Program. Ms. Johnston testified that the parents never attended any meetings with respect to S.F.-B.'s special education services.

Ms. Johnston testified that if Mother's parental rights were terminated the children would not suffer any irreparable harm. (N.T., 12/17.13, pg. 33). Ms. Johnston testified that both children have been with the maternal grandparents for the last four (4) years. Specifically, S.F.-B. has been in DHS custody since she was seven (7) months old and she is now four and a half (4½) years old. S.F.-B. views her maternal grandparents as her parents. S.F.-B.'s maternal grandparents have been the only caregivers that S.F.-B. has known the majority of her life. Id. Similarly, Ms. Johnston testified that the children would not suffer irreparable harm if the Father's parent rights were terminated. Father has not parented his children in the past four (4) years. Ms. Johnston further testified that Father never contacted DHS to inquire about the children's welfare. Father never contributed financially to the children's upbringing. The children have been with the

maternal grandparents for an extended period of time and are doing well in the home. The maternal grandparents have been the children's primary caregivers and their only caregivers for the last four (4) years. (N.T., 12/17/13, pg. 36).

Ms. Johnston testified that if the Court were to change the children's permanency goal to adoption, the children would not suffer any irreparable harm. Ms. Johnston testified that she believes that the termination of the parents' respective parental rights is in the best interest of the children. Both children view their maternal grandparents as their parents. (N.T., 12/17/13, pg. 37). Ms. Johnston also testified that from her observation of Mother's interaction with M.F.-B., the child interacts with Mother but does not acknowledge her as Mother. In regard to Mother's relationship and interactions with S.F.-B., Ms. Johnston similarly testified that the child acknowledges Mother but that the child calls her maternal grandmother "Mommy." Ms. Johnston testified that S.F.-B.'s relationship with Mother is one in which the child interacts with Mother but does not call her or identify her as Mother. (N.T., 12/17/13, pg. 41). Ms. Johnston testified that she believes it is appropriate for the children to remain in the care of their maternal grandparents because all of their needs are being met, they are doing well, and to remove the children at this time would cause a severe disruption and disservice to them. *Id.* at 42.

On cross-examination, Ms. Johnston testified that although Mother did complete parenting classes at the ARC, Ms. Johnston observed minimal improvement with Mother's parenting skills. *Id.* at 47. Ms. Johnston testified that parents were made aware of their outstanding FSP objectives and signed the appropriate documents. Ms. Johnston testified that parents also attended a majority of the court hearings. *Id.* at 48. Ms. Johnston testified that for the past four (4) years the grandparents have taken care of the

children's daily needs. Moreover, the grandparents provide for the children's medical and educational needs. Ms. Johnston testified that Mother recently stated in December 2013 that there was nothing wrong with her children and that they did not need any special services. Ms. Johnston also testified that in the four (4) years that the children have been court-involved, the parents have never moved past supervised visits. (N.T., 12/17/13, pg. 68).

Next the Department called Samantha Sabatico, the agency social worker, who testified that she was the assigned case worker at Wordsworth Academy for the children. (N.T., 12/17/13, pg. 69). Ms. Sabatico testified that she visits the children at least two (2) times a month in their current home with the maternal grandparents. She makes sure that the children's needs are being met and she monitors their services through the school. Ms. Sabatico also testified that she observed the visits between the parents' and the children at the agency. Ms. Sabatico stated that she observed three (3) visits in total. The last visit she observed involved both parents and was back in 2012. Ms. Sabatico was not able to observe any of the visits at the foster home because the parents never got back to her regarding setting up an observation time.

Ms. Sabatico observed both children interact with the maternal grandparents. In regard to M.F.-B. and his relationship with his maternal grandfather, Ms. Sabatico testified that the child is very close to his maternal grandfather and that they share a parental bond. Ms. Sabatico testified that M.F.-B. goes to his maternal grandfather for guidance and comfort; they are strongly bonded. (N.T., 12/17/13, pg. 74). Ms. Sabatico also stated that S.F.-B.'s relationship with her maternal grandfather is very similar to that stated for M.F.-B. Both children look to their maternal grandfather as their father figure

and are strongly bonded with him. Ms. Sabatico further testified that both children are also strongly bonded with their maternal step-grandmother and go to her for "their needs, their wants, their comfort, [and] anything parental that happens in the home." (N.T., 12/17/13, pg. 75).

Ms. Sabatico testified that if the parents' respective legal rights to their children were terminated that neither child would suffer irreparable harm as a result. (N.T., 12/17/13, pg. 74). The children are both very bonded to the maternal grandparents and the children look to them as their true parents; it is the only life that the children know. When Ms. Sabatico did observe the children with their biological parents, she testified that the interaction was more "playing," and that she did not observe a parental bond with the children and the biological parents. (N.T., 12/17/13, pg. 76). Ms. Sabatico believes that the goal of adoption is in the children's best interest. She stated that the children have a very happy life with the maternal grandparents and are strongly bonded with them. The children receive the necessary parental love and support from their maternal grandparents.

Ms. Sabatico stated that M.F.-B. has really blossomed into a great kid. Initially M.F.-B. was non-verbal, withdrawn, and did not make eye contact. But after the grandparents worked with the child and provided the appropriate services, M.F.-B. is friendly, outgoing and well spoken. (N.T., 12/17/13, pg. 78).

T.B., the children's maternal step-grandmother, testified that the children are currently in her care and are doing well. T.B. testified that she and her husband, the maternal grandfather, provide for the children's medical, educational, and daily needs. (N.T., 12/17/13, pg. 82). T.B. testified that the last time either parent came to her home

for a visit with the children was two (2) years ago, and that no visitation with the children is currently happening at her home. However, T.B. testified that they take the children to Mother's home at least one a week;

III. Discussion of the Law

With respect to involuntary termination of parental rights cases, the Superior Court's review is limited to a "determination of whether the decree of the termination court is supported by competent evidence." In re: Adoption of L.J.B., 18 A.3d 1098, 1107 (Pa. 2011); Adoption of B.D.S., 431 A.2d 203, 207 (Pa. 1981). The Superior Court summarized the scope and standard of review for appeals from termination orders:

An appellate court, in reviewing a termination order, must employ a broad, comprehensive review of the record, but is limited in its standard of review to a determination of whether the trial court's termination of [Mother's] parental rights is supported by competent evidence. Stated differently, unless the lower court has abused its discretion or committed an error of law, the order must stand.

In re: Baby Boy P., 482 A.2d 660, 661 (Pa. Super. 1984).

The standard of review for termination appeals is one of clear and convincing evidence. The Superior Court has held that "in a proceeding to involuntarily terminate parental rights, the burden of proof is upon the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so." In re: N.W., 859 A.2d 501, 506-07 (Pa. Super. 2004). Clear and convincing evidence is defined as "testimony that is clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitance, of the truth of the precise facts in issue." Matters of Sylvester, 555 A.2d 1202, 1203 (Pa. 1989).

It is the duty of the trial court, not the appellate court, to evaluate the “credibility of the witnesses and [resolve] any conflicts in the testimony.” In re M.G., 855 A.2d 68, 73-74 (Pa. Super. 2004); In re Adoption of A.C.H., 803 A.2d 224, 228 (Pa. Super. 2002). In carrying out these responsibilities, the trial court is “free to believe all, part, or none of the evidence.” M.G. at 73-74. If the trial court’s findings are supported by competent evidence, then the appellate court must affirm “even if the record could also support an opposite result.” In the Interest of S.H., 879 A.2d 802, 806 (Pa. Super. 2005), *appeal denied sub nom.*, S.H. v. V.H., 892 A.2d 824 (Pa. 2005). “Absent an abuse of discretion, an error of law, or insufficient evidentiary support, the trial court’s termination order must stand.” In re: C.M.S.M., 884 A.2d 1284, 1286 (Pa. Super. 2005), *appeal denied sub nom.*, C.M.S. v. D.E.H. 897 A.2d 1183 (Pa. 2006).

The evidence presented at the December 17, 2013, hearing underlying the instant termination of the parental rights was clear and convincing.

A. Mother’s Issues on Appeal Should be Waived.

Initially this Court notes that Mother’s appellate issues are waived because her 1925(b) Statement is overly vague. “An appellant’s concise statement must properly specify the error to be addressed on appeal.” Commonwealth v. Hansley, 24 A.3d 410, 415 (Pa. Super. 2011) (citation omitted). Indeed, “the Rule 1925(b) statement must be specific enough for the trial court to identify and address the issue an appellant wishes to raise on appeal.” Id. The court may find waiver if a concise statement is too vague. Id.

Here, the Mother’s 1925(b) Statement contains only general allegations of error and fails to identify specific issues. Specifically, the 1925(b) Statement states that “DHS hasnt [sic] followed up with home visits” or “DHS hasn’t had accurate dates on visits and

requirements for fsp”; Mother does not identify possible dates for home visits or FSP meetings. Further, the 1925(b) Statement states that the first DHS worker made certain statements regarding certain services, but Mother fails to specify which DHS worker made the statements or what those statements were. For these reasons, Mother has waived any issues on appeal.

In addition, Mother’s issues on appeal are waived because she never argued any of the points at trial, nor previously submitted those questions before the trial court. Mother never mentioned either Behavior Health Services’ inability to follow up with the therapists, or inaccurate dates on visitation logs, or FSP meeting dates. The Pennsylvania Rules of Appellate Procedure clearly state that, “Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.” Pa. R.A.P. 302(a).

A review of the record reveals that Mother never raised the five short issues presented on appeal prior to filing her 1925(b) statement. The case law is clear that “A party cannot rectify the failure to preserve an issue by proffering it in response to a Rule 1925(b) order.” Davis v. Woxall Hotel, Inc., 577 A.2d 636, 639 (Pa. Super. 1990) (citing Commercial Credit Corp. v. Cacciatiore, 495 A.2d 540, 543 (Pa. Super. 1985)). A Rule 1925(b) statement of matters complained of on appeal is not a vehicle in which issues not previously asserted may be raised for the first time. It is, instead, the vehicle by which an appellant advises the trial court of the previously preserved issues that the appellant will advance on appeal so that the trial court may determine if it needs to write an opinion and to direct the trial court to the issues for which an opinion is needed. Glenbrook Leasing Company v. Beausang, 839 A.2d 437, 444 (Pa. Super. 2003) *aff’d*, 881 A.2d 1266 (Pa. 2005).

Here, Mother makes several claims that DHS did not follow up with home visitation, and that DHS did not have accurate dates of visits and FSP meetings. However, Mother never mentioned these issues until the filing of her 1925(b) statement. In addition, there is nothing in the record which otherwise indicates that DHS did not follow up with visitation or that DHS had inaccurate dates for visits and FSP meetings. Therefore, Mother never preserved those issues for appeal.

For these reasons, Mother has waived her claims on appeal.

B. The Trial Court Properly Terminated Mother's and Father's Respective Parental Rights Pursuant to §2511(a) of the Adoption Act by Clear and Convincing Evidence.

In the event that it is deemed that Mother did not waive her issues on appeal, this Court's decision should be affirmed on its merits.

DHS petitioned for involuntary termination of Mother and Father's respective parental rights pursuant 23 Pa. C.S.A. §2511(a) of the Adoption Act, which provides, in pertinent part, that the rights of a parent may be terminated upon any of the following grounds:

- (1) The parent by conduct continuing for a period of at least six [6] months either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.
- (2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.
- (5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six [6] months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not 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, [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 of parental rights would best serve the needs and welfare of the child.

23 Pa. C.S. §2511(a)(1), (2), (5), (8).

Both parents appeal this Court's finding that each of these aforementioned statutory subsections were satisfied. This Court is satisfied that grounds for termination under each of the above-quoted subsections of the Adoption Act have been established by clear and convincing evidence. However, since the satisfaction of any one (1) subsection of §2511(a) is required in order to shift the analysis to §2511(b), this Court focuses on the subsection 23 Pa. C.S. §2511(a)(1). *In re B.L.W.*, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*), *appeal denied*, 863 A.2d 1141 (Pa. 2004).

The Superior Court has made it clear that §2511(a)(1) focuses on the behavior of the parent with respect to the minor child at issue for the six (6) months prior to the filing of the termination petitions. The parent must exhibit a settled purpose of relinquishing parental claim of the minor child at issue, or must show an inability to perform parental duties. *In re: Adoption of M.E.P.*, 825 A.2d 1266 (Pa. Super. 2003). In the instant case, in the six (6) months preceding the filing of the termination petition, Mother and Father repeatedly failed to comply with their respective FSP objectives. Ms. Johnston testified at the hearing that Mother was not compliant with either her mental health evaluation, or her supervised visitation at the agency, or her employment objective, or attending medical and educational appointments and family school. Mother repeatedly failed to follow various DHS recommendations, court ordered appointments, and rehabilitative

programs. Similarly, Father was not compliant with his court ordered drug and alcohol treatment program. Ms. Johnston testified that Father did not complete family school, did not obtain appropriate housing in a timely manner, did not attend the children's medical appointments, did not attend the children's educational meetings, and did not attend supervised visitation at the agency.

The Superior Court has made it clear that a refusal to comply with FSP objectives may evidence a lack of commitment to repairing a parent's relationship with his or her child and may be sufficient to demonstrate an unwillingness and/or inability to care for those children under §2511(a) of the Adoption Act. See e.g., In the Matter of the Adoption of J.M.M., 782 A.2d 1024 (Pa. Super. 2001), *appeal denied*, 797 A.2d 914 (Pa. 2002). In the instant matter, the testimony was clear that both Mother's and Father's respective FSP objectives remained substantially the same for the four (4) year duration of the case, and that neither Mother nor Father completed a majority of their respective FSP objectives. Neither parent obtained unsupervised contact with the children for the past four (4) years. Furthermore, Ms. Johnston testified at the termination hearing that Mother only attended three (3) supervised visits at the agency during the four (4) year duration of the case. Mother and Father have time and time again failed to utilize resources made available to them during the four (4) years in which the children have been in placement.

In sum, this Court found that Mother and Father's respective lack of action to be indicative of their intent to relinquish their respective parental responsibilities and a refusal or failure to perform parental duties. The children have been in DHS custody for four (4) years and neither Mother nor Father has completed their respective FSP

objectives or put themselves in a position to provide appropriate parenting. The fact that Father has not completed any drug and alcohol treatment in four (4) years is very disturbing. Father has a history of drug abuse. Further, this Court finds the parents' respective inability to accept the children's special needs disconcerting. Ms. Johnston testified that M.F.-B. is diagnosed with autism and S.F.-B. has speech delays; both children need special services and attention that the biological parents have not provided. It was, therefore, Mother's and Father's own choice not to be involved in the day-to-day lives of their children for the last four (4) years. It was Mother's and Father's choice to not make any contribution to the children's physical, emotional or financial support. There is nothing in record to indicate that either Mother or Father could provide for the children.

This Court agrees with the testimony of the DHS worker and agency worker, and finds by clear and convincing evidence that DHS has met its burden as contemplated by 23 Pa. C.S. § 2511(a).

C. The Trial Court had Competent Evidence to Terminate Mother's and Father's Respective Parental Rights Pursuant to § 2511(b) of the Adoption Act Because Termination Promoted the Emotional Needs and Welfare of the Children.

Once the court has reached a determination that grounds for involuntary termination have been met under 23 Pa. C.S. §2511(a), consideration of the parent-child bond under 23 Pa. C.S. §2511(b) is required. 23 Pa. C.S. §2511 provides, in pertinent part:

(b) The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical

care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

23 Pa. C.S. § 2511(b). “Intangibles such as love, comfort, security, and stability are involved when inquiring about the needs and welfare of the child.” In re C.P., 901 A.2d 516, 520 (Pa. Super. 2006). The court must determine “the nature and status of the parent-child bond, paying close attention to the effect on the child of permanently severing the bond.” Id.

Whether a bond exists, however, is not the full extent of the inquiry; rather, it is whether the bond indicates a beneficial relationship that should be preserved. See In re: C.L.G., 956 A.2d 999 (Pa. Super. 2008) (bond stronger with foster parents). The real question is whether the bond is worth saving and whether it can be severed without irreparable harm to the child. In the Interest of K.Z.S., 946 A.2d 753, 764 (Pa. Super. 2008).

In the instant matter, both Ms. Johnston and Ms. Sabatico testified that the children would not suffer any irreparable harm if Mother’s and Father’s respective parental rights were terminated. The children do not have a beneficial relationship with either Mother or Father. Throughout the duration of the case, neither Mother nor Father attained unsupervised visitation with the children due to both their non-compliance with their respective FSP objectives and their respective inability to visit the children regularly. Ms. Johnston further testified that the M.F.-B. refers to the maternal grandmother as “Mommy,” and that the relationship between the children and the maternal grandparents is one of parents and children.

This Court considered the testimony by these witness credible, and found that the Commonwealth had met its burden by clear and convincing evidence that termination was appropriate pursuant to 23 Pa. C.S. §2511(b).

i. **Swift Permanency**

Another part of the bonding analysis pertains to the balancing of swift permanency for the children versus any detrimental effect the permanent severing of the relationship between the children and the natural parent would have on the child. As the Superior Court explained, a swift and efficient determination is needed because “the state should not seek to preserve in law a relationship which no longer exists in fact, with the result that the child is consigned indefinitely to the limbo of foster care or the impersonal care of institutions.” In re Adoption of B.J.R., 579 A.2d 906, 915 (Pa. Super. 1990).

The Superior Court has also instructed the trial court to give consideration to the “importance of continuity of relationships to the child and whether the parent-child bond, if it exists, can be severed without detrimental effects on the child.” In re K.Z.S. at 763. See also, In re Adoption of T.B.B., 835 A.2d 387, 397 (Pa. Super. 2003) (trial court must determine whether termination of parental rights would “destroy an existing, necessary, and beneficial relationship.”); In re C.M.S. at 1287 (trial court must examine the nature and status of the bond, with attention provided to the effect on the child of permanently severing that bond.); In re A.S., 11 A.3d 473, 483 (Pa. Super. 2010) (trial court should “consider the continuity of relationships and whether any existing parent-child bond can be severed without detrimental effects on the child.”).

In the instant matter, the children have been in DHS custody for four (4) years. This court cannot deny the children permanency in hopes that either Mother or Father

will change their respective actions. This Court has given both parents ample time to rectify the circumstances which brought their children into DHS custody. Ms. Sabatico testified that the maternal grandparents and the children have a beneficial and loving parent/child relationship.

ii. **Needs and Welfare of the Child**

In addition to an examination of the presence or absence of a bond between the biological parent and minor child at issue, the trial court must also follow the statutory language and engage in a broad analysis of the “developmental, physical and emotional needs and welfare of the child.” 23 Pa. C.S. §2511(b). As the Superior Court explained:

[w]hile a parent’s emotional bond with his or her child is a major aspect of the Subsection 23 Pa. C.S. §2511(b) best-interest analysis, it is nonetheless only one of many factors to be considered by the court when determining what is in the best interest of the child.

In re N.A.M., 33 A.3d 95, 103 (Pa. Super. 2011). See also In re K.K.R.S., 958 A.2d 529 (Pa. Super. 2008). The other factors to be considered include “intangibles such as love, comfort, security, and stability . . .” In re C.M.S. at 1287; In re A.S. at 483; In re Adoption of B.J.R. at 914.

The record reveals that neither Mother nor Father provided the contemplated intangibles to the children in the same way as the maternal grandparents. Parents must demonstrate their commitment with actions, and the record reveals that Mother and Father have failed to demonstrate their commitment for a period of four (4) years.

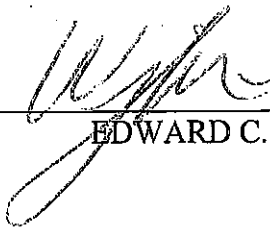
In light of the record, the Commonwealth has met its burden by clear and convincing evidence that the manner in which the grandparents provided these intangibles was appropriate pursuant to 23 Pa. C.S. §2511(b).

IV. Conclusion

Accordingly, for all of the reasons stated above, this Court's decision should be affirmed.

BY THE COURT:

March 4, 2014


_____, J.
EDWARD C. WRIGHT