NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

IN INT. OF: J.D.M.	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
APPEAL OF: N.M., MOTHER,	:	No. 42 MDA 2014
	:	
Appellant	:	

Appeal from the Order, December 10, 2013,
in the Court of Common Pleas of Franklin County
Domestic Relations Division at No. CP 28 DP 33-2012

IN RE: ADOPTION OF:	:	IN THE SUPERIOR COURT OF
J.D.M., A MINOR	:	PENNSYLVANIA
	:	
APPEAL OF: N.M., MOTHER,	:	No. 43 MDA 2014
	:	
Appellant	:	

Appeal from the Order Entered December 10, 2013,
in the Court of Common Pleas of Franklin County
Orphans' Court Division at No. 30 Adopt 2013

BEFORE: FORD ELLIOTT, P.J.E., OLSON AND STRASSBURGER,* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED JULY 08, 2014**

Appellant, N.M. ("Mother"), appeals from the trial court's December 10, 2013 orders that granted the petition to terminate her parental rights to J.D.M. ("Child") filed by the Franklin County Children and

* Retired Senior Judge assigned to the Superior Court.

Youth Services ("the Agency") and changed Child's permanency goal to adoption.[1] We affirm.

The relevant facts and procedural history of this case have been succinctly set forth in the trial court opinion. Therefore, we have no need to state them herein.

Mother raises the following issues for our review:

> I. Did the trial court err in determining [the Agency] presented clear and convincing evidence to terminate mother's parental rights under 23 Pa.C.S.A. § 2511(a)(2), § 2511(a)(5) and § 2511(a)(8)?
>
> II. Did the trial court err in determining there was sufficient evidence that termination of mother's parental rights under 23 Pa.C.S.A. § 2511(b) was in the best interest of the child?
>
> III. Did the trial court err in determining [the Agency] presented clear and convincing evidence to change the dependent child's goal to adoption?

Mother's brief at 5.

We review appeals from the involuntary termination of parental rights according to the following standard:

> [A]ppellate courts must apply an abuse of discretion standard when considering a trial court's determination of a petition for termination of parental rights. As in dependency cases, our standard of review requires an appellate court to accept the findings of fact and credibility determinations of the trial court if they are supported

[1] The two appeals were consolidated ***sua sponte*** by order of this court entered on January 28, 2014.

> by the record. If the factual findings are supported, appellate courts review to determine if the trial court made an error of law or abused its discretion. As has been often stated, an abuse of discretion does not result merely because the reviewing court might have reached a different conclusion. Instead, a decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will.
>
> . . . [T]here are clear reasons for applying an abuse of discretion standard of review in these cases. We observed that, unlike trial courts, appellate courts are not equipped to make the fact-specific determinations on a cold record, where the trial judges are observing the parties during the relevant hearing and often presiding over numerous other hearings regarding the child and parents. Therefore, even where the facts could support an opposite result, as is often the case in dependency and termination cases, an appellate court must resist the urge to second guess the trial court and impose its own credibility determinations and judgment; instead we must defer to the trial judges so long as the factual findings are supported by the record and the court's legal conclusions are not the result of an error of law or an abuse of discretion.

In re Adoption of S.P., 47 A.3d 817, 826-827 (Pa. 2012) (internal citations omitted).

On appeal, goal change decisions are subject to an abuse of discretion standard of review. ***In re N.C.***, 909 A.2d 818, 822 (Pa.Super. 2006).

> In order to conclude that the trial court abused its discretion, we must determine that the court's judgment was "manifestly unreasonable," that the court did not apply the law, or that the court's action was "a result of partiality, prejudice, bias or ill will," as shown by the record. We are bound by the trial court's findings of fact that have support in the

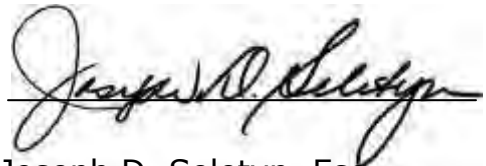
> record. The trial court, not the appellate court, is charged with the responsibilities of evaluating credibility of the witness and resolving any conflicts in the testimony. In carrying out these responsibilities, the trial court is free to believe all, part, or none of the evidence. When the trial court's findings are supported by competent evidence of record, we will affirm, "even if the record could also support an opposite result."

Id. at 822–823 (internal citations omitted).

After a thorough review of the record, the briefs of the parties, the relevant law, and the well-reasoned opinion of the trial court, it is our determination that there is no merit to the issues raised on appeal. The trial court's 27-page opinion fully discusses and correctly dispatches Mother's contentions. Accordingly, we affirm on the basis of that opinion.

Orders affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/8/2014

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF PENNSYLVANIA – FRANKLIN COUNTY BRANCH

IN RE: ADOPTION OF	:	**Orphans' Court Division**
J.D.M.	:	
	:	**30 - ADOPT - 2013**
A Minor	:	
	:	
	:	
	:	**Honorable Carol L. Van Horn**

IN INTEREST OF:	:	**Juvenile Court Division**
	:	
J.D.M.,	:	**CP28-DP-0033-2012**
A Minor Male Child	:	
	:	
Born: September 13, 2011	:	
	:	**Honorable Carol L. Van Horn**

STATEMENT OF THE CASE

J.D.M. was born on September 13, 2011 [hereinafter "the child" or "J.D.M."] to N.M. [hereinafter "Mother"].[1] On June 22, 2012, when J.D.M. was nine months old, Franklin County Children and Youth Service [hereinafter "the Agency"] was notified that he had bruising on his ears and a burn on his foot. The Agency was also notified that Mother was using synthetic marijuana, "K2," regularly around J.D.M. On the same day, the Agency conducted an unannounced home visit and discovered that J.D.M. had a serious injury on his left foot, bruising on his ear, sores and abrasions on his lower back and right leg, marks on his face, and a rash on various parts of his body. By Emergency Order, J.D.M. was immediately placed in foster care provided by the Children's Aid Society of Franklin County [hereinafter "CAS"].

J.D.M. was subsequently examined and treated by various doctors. Dr. Newlin and Dr. Bricker were concerned about his weight because he only weighed fifteen pounds. J.D.M. was

[1] Unless indicated otherwise, the Statement of the Case is a summary of the Court's Findings of Fact in the Decree dated December 10, 2013, incorporated herein by reference.

also given a skeletal survey and head CT scan which revealed a healing rib fracture and soft tissue swelling on his right thigh and left knee.

On July 23, 2012, J.D.M. was adjudicated a dependent child and placed in the legal and physical custody of the Agency. Mother was ordered to participate in a parental fitness assessment, to participate in a drug and alcohol assessment, to have consistent visitations with J.D.M., to maintain stable and appropriate housing, and to maintain financial stability.

On October 15, 2012, Mother participated in a parental fitness assessment completed by Dr. David Leaman. Dr. Leaman concluded that Mother was a teenager who was not prepared for parental responsibilities. She lacked sufficient parenting skills and found it difficult to understand the developmental needs of a child. Dr. Leaman also reported that Mother did not have an adequate bond with J.D.M. and expressed ambivalence about her role as his parent. It was recommended that Mother participate in parenting classes, obtain a job and demonstrate consistent capacity to function successfully in employment. Dr. Leaman recommended further that Mother participate in a mentoring program for teenage mothers, continue to pursue a high school education, and obtain her drivers' license.

Eleven months later, a second parental fitness assessment was performed on September 13, 2013 by Dr. JoAnn MacGregor. Transcript of Proceedings of Termination of Parental Rights, 12/10/2013, at 7-8 (hereinafter "N.T. ___"). Regarding Mother's ability to safely parent, Dr. MacGregor concluded that:

> both her intellectual and her psychological functioning is impaired and that she is not currently stable and that her level of impairment would impact her ability to both achieve and maintain a minimal level of her own personal adult stable lifestyle. In other words, there's concerns that she's not able to manage herself adaptively which would preclude her ability to adequately care for a child.

N.T. 11. Dr. MacGregor further concluded that Mother's "parental capacities can't be improved until there's a context of personal stability," and "that it is unlikely that within the next, say three to five years . . . she's going to be able to achieve and maintain any level of personal stability with regard to an adult lifestyle." N.T. 14.

Mother's use of the synthetic marijuana "K2" is concerning. She participated in a drug and alcohol assessment on October 14, 2012 which recommended no services, but the Agency continued to receive allegations that Mother was using "K2" regularly. On March 25, 2013, Mother gave birth to a daughter and admitted to the Agency that she used "K2" during her pregnancy. Accordingly, Mother was ordered to participate in a second drug and alcohol evaluation. N.T. 40. She sought drug and alcohol treatment immediately after the birth but did not attend two scheduled appointments. She also failed to attend drug and alcohol assessments scheduled for August 17, 2013 and November 7, 2013.

Regarding Mother's visitations with J.D.M., she participated in six (6) out of eight (8) visits scheduled between July 13, 2012 and September 8, 2012. On September 8, 2012, Mother's visits were transferred from CAS to the STEPS Program provided by Alternative Behavior Consultants [hereinafter "ABC"]. However, on February 4, 2013, Mother was unsuccessfully discharged from the STEPS program after attending only twenty eight (28) of forty (40) scheduled visits with J.D.M. Between February 4, 2013 and June 25, 2013, Mother participated in only ten (10) of thirty five (35) visits. After June 26, 2013, Mother attended thirteen (13) of eighteen (18) scheduled visits, but was discharged on September 26, 2013 after missing her fifth visit.

Mother has struggled to find stable and appropriate housing. Mother lived with her boyfriend from about June 25, 2012 to December 2012 when they moved in with his paternal

grandparents in Shippensburg. In February 2013, Mother and her boyfriend were evicted from his grandparents' home and moved to her boyfriend's mother's home; the same residence Mother was living in with J.D.M. when he was removed from her care. Between March 12, 2013 and June 7, 2013, Mother reported to the Agency that she had moved on four more occasions. On June 7, 2013 Mother's boyfriend was arrested for a domestic violence related incident after allegedly striking Mother. After her boyfriend's arrest, Mother moved into an apartment rented by her step-sister and a friend. At the December 10, 2013 termination hearing, Mother testified that she had moved again and was living with her mother and her mother's boyfriend. N.T. 110.

Mother's final task was to maintain financial stability. As of the date of the termination hearing, she reported working at the Four Seasons Trading Post but did not have a regular schedule or income. Mother informed the Agency that she was a full-time student at Chambersburg Area High School, but after contacting the school, the Agency confirmed that she withdrew. Mother is currently on the waiting list to attend the Manito Alternative School, but her enrollment date is unknown.

From the time of J.D.M.'s initial placement to the termination hearing, he had been in foster care for over seventeen (17) months. Permanency review hearings were held on September 27, 2012, December 20, 2012, March 25, 2013 continued to April 11, 2013, and June 25, 2013. With Mother making minimal progress towards reunification and achievement of the permanency plan, the Agency filed a Petition for Involuntary Termination of Parental Rights on June 12, 2013. *See* Petition for Involuntary Termination of Parental Rights, 6/12/2013. The Petition was dismissed by Court Order on June 25, 2013. Order of Court, 6/25/2013. On October 9, 2013, the Agency filed a second Petition for Involuntary Termination of Parental

Rights [hereinafter "Petition"]. Petition for Involuntary Termination of Parental Rights, 10/9/2013. A permanency review hearing and hearing on the Petition was initially scheduled for November 1, 2013, but was continued to December 10, 2013.

At the December 10, 2013 hearing, Mother's parental rights were involuntarily terminated. Additionally, the Court changed the permanency goal for J.D.M.. from reunification to adoption. *See* N.T. 134-135. Mother filed a timely Notice of Appeal on December 30, 2013 in both the dependency and Orphans' Court matters. She filed Concise Statements of Matters Complained of on Appeal concurrently.

ISSUES RAISED

Mother is appealing the Court's decision in both the termination and the goal change. In the termination, Mother believes the Court's decision to terminate her parental rights is not supported by clear and convincing evidence and constitutes an abuse of discretion as set forth below:[2]

1) There was insufficient evidence to determine by clear and convincing evidence that the causes of any parental incapacity, abuse, neglect or refusal that cannot or will not be remedied by Mother continued to exist at the time of the hearing, specifically as follows:
   a) Mother attended visitations with the child and acted appropriately with the child, showing love and care for the child.
   b) Mother willingly complied with the goals set by the Agency, including participating in parenting classes, two parental fitness evaluations, a Drug and Alcohol Evaluation and maintaining housing and employment.
2) Mother's actions did not lead to the child's original placement in July 2012.

[2] Concise Statement of Matters Complained of on Appeal, 30 - ADOPT – 2013, 12/30/2013.

a) Mother was an abused minor when her child was placed and she should have been placed with her child.

3) The trial court erred in finding the child's bond with foster parents and adjustment to pre-adoptive foster home adequate substitute for evaluating the bond and attachment child has with Mother.

a) The Foster Care Case Manager reported that the child calls Mother "mommy" or "mama" and displays affection and an attachment to his Mother.

b) The record reflects that the child invites Mother to sit with him, brings toys to her, exchanges kisses, is comforted by her with kisses on "boo boos" listens to her when redirected and that Mother is able to soothe him.

4) The trial court erred in finding that the Agency provided . . . [Mother] with adequate services to reunify the family.

a) Mother's counsel raised the issue of referral for Family Group Decision Making Conference with the Court and the Agency on many occasions; but, no referral was made until 11 months after placement when the lower court finally ordered that a referral be made.

b) The Agency ultimately failed to provide Mother this integral service even after she repeatedly requested it, the service was appropriate and approved, and for which provider referral was made.

c) The Agency failed to provide Mother with any services and interventions recommended by the clinical psychologist after parental fitness assessment.

d) The Agency moved on the opinion that Mother's functioning is impaired to such a degree that she cannot benefit from therapeutic interventions or utilize new information, which is controverted by evidence in the record.

e) The record reflects Mother's ability to take direction, learn and progress, in learning new parental skills.

f) Additional services could be provided to Mother to assist in reunification of the family such as a Family Group Decision Making Conference, Intensive Case Management and Outpatient Therapy.

Similarly, in the goal change, Mother believes that the Court's decision to set the permanent placement goal at adoption is not supported by clear and convincing evidence and constitutes an abuse of discretion for the following reasons:[3]

1) Mother's actions did not lead to the child's original placement in July 2012.

2) Mother was an abused minor when her child was placed and she should have been placed with her child.

3) The Agency failed to provide Mother integral services that she repeatedly requested, was approved for, and for which provider referral was made.

4) The Agency failed to provide Mother with any services and interventions recommended by the clinical psychologist after parental fitness assessment.

5) The Agency moved on the opinion that Mother's functioning is impaired to such a degree that she cannot benefit from therapeutic interventions or utilize new information, which is controverted by evidence in the record.

6) Mother has a strong bond with her child.

[3] Concise Statement of Matters Complained of on Appeal, CP28-DP-0033-2012, 12/30/2013.

7) Additional services could be provided to Mother to assist in reunification of the family.

Similarly,

The Court will now respond to Mother's claims of error in this Opinion and Order of Court pursuant to Pa.R.A.P. 1925(a).

DISCUSSION

I. Involuntary Termination

The standard of review regarding termination of parental rights is well established:

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

In re S.H., 879 A.2d 802, 805 (Pa. Super. 2005) (citation omitted). "In addition, the trial court, as fact finder, is the sole determiner of the credibility of witnesses and resolves all conflicts in testimony." *Id.* (citing *In re Adoption of A.C.H.*, 803 A.2d 224, 228 (Pa. Super. 2002)). The standard of clear and convincing evidence, the burden of proof in such cases on the petitioner, is testimony that is so "clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitance, of the truth of the precise facts in issue." *In re J.L.C. & J.R.C.*, 837 A.2d 1247, 1251 (Pa. Super. 2003). "If the court's findings are supported by competent evidence," the appellate court must affirm the decision "even if the record could support an opposite result." *In re Z.P.*, 994 A.2d 1108, 1116 (Pa. Super. 2010) (citing *In re R.L.T.M.*, 860 A.2d 190, 191–92 (Pa. Super. 2004)). In addition, the appellate court need only

agree with the trial court's decision regarding any one subsection of 2511(a) to affirm the termination of parental rights. *See In re A.S.*, 11 A.3d 473, 478 (Pa. Super. 2010).

The Court acknowledges the great pain a parent suffers when faced with the termination of their parental rights. Yet, just as parents have parental rights over their children, they also have duties to provide for and care for their children. Through the statute permitting the termination of parental rights (23 Pa. C.S. § 2511 *et seq.*), our legislature has required "certain irreducible minimum requirements of care that parents must provide for their children, and a parent who cannot or will not meet the requirements within a reasonable time following intervention by the state may properly be considered unfit and have his parental rights terminated." *In re Z.P.*, 994 A.2d at 1118 (*quoting In re B.L.L.*, 787 A.2d 1007, 1013 (Pa. Super. 2001)).

The termination of parental rights involves a two-part test, focusing initially on the conduct of the parent in light of the statutory grounds for termination set forth under 23 Pa. C.S. § 2511(a). *See In re R.N.J.*, 985 A.2d 273, 277 (Pa. Super. 2009). Where grounds under the first part of the statute are clearly and convincingly proven, the Court must then engage in analysis under Section 2511(b). *See id.* In this second inquiry, the Court must determine whether the needs and welfare of the child will be served by termination under the standard of the best interest of the child. *See id.*

In the instant case, legal grounds for termination were found pursuant to 23 Pa. C.S. § 2511(a)(2), 23 Pa. C.S. § 2511(a)(5), and 23 Pa. C.S. § 2511(a)(8).

a. 23 Pa. C.S. § 2511(a)(2)

Examining 23 Pa. C.S. § 2511(a)(2) first, parental rights can be terminated due to:

> 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.

23 Pa. C.S. § 2511(a)(2). Under § 2511(a)(2), the petitioner must prove by clear and convincing evidence the parents' "(1) repeated and continued incapacity, abuse, neglect or refusal; (2) that such incapacity, abuse, neglect or refusal caused the child to be without essential parental care, control or subsistence; and (3) the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied." *In Interest of Lilley*, 719 A.2d 327, 330 (Pa. Super. 1998) (citing *In re Geiger*, 331 A.2d 172 (Pa. 1975)).

The first issue Mother raises on appeal is implicated in the Court's analysis of the third required factor. Mother argues that the evidence was insufficient to determine by clear and convincing evidence that the causes of any parental incapacity, abuse, neglect or refusal that cannot or will not be remedied by Mother continued to exist at the time of the termination hearing. In support, Mother asserts that she attended visitations with J.D.M. where she acted appropriately and showed him love and care, and that she willingly complied with the goals set by the Agency, including participating in parenting classes, two parental fitness evaluations, a drug and alcohol evaluation, and maintaining housing and employment.

Our appellate courts have stated, "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." *In re Z.P.*, 994 A.2d 1108, 1117 (Pa. Super. 2010) (citation omitted). In enacting § 2511(a)(2) the "legislature . . . concluded that a parent who is incapable of performing parental duties is just as parentally unfit as one who refuses to perform the duties." *In re Adoption of S.P.*, 47 A.3d 817, 827 (Pa. 2012) (citations omitted). Therefore, a parent's sincere and genuine

efforts may not be enough to remedy their incapacity. *See In re Z.P.*, 994 A.2d at 1117. "Parents are required to make diligent efforts toward the reasonably prompt assumption of full parental responsibilities," and a "parent's vow to cooperate, after a long period of uncooperativeness regarding the necessity or availability of services, may properly be rejected as untimely or disingenuous." *Id.* at 1117-18 (quoting *In re A.L.D.*, 797 A.2d 326, 340 (Pa. Super. 2002)).

The crux of Mother's argument is that at the time of the termination hearing, there was not clear and convincing evidence to show that the causes of her parental incapacity, abuse, neglect or refusal cannot be remedied. The Court disagrees. Although Mother asserts she has complied with Agency goals, such compliance has been haphazard at best, and the record reflects that she is still unable to adequately provide for J.D.M. presently or in the near future.

J.D.M. was taken into custody in June 2012 because his safety was in jeopardy. He was found with a serious injury on his left foot, bruising on his ear, sores and abrasions on his lower back and right leg, marks on his face, and a rash on various parts of his body. These injuries occurred while he was in Mother's care. After J.D.M. was adjudicated dependent, Mother was ordered to participate in a parental fitness assessment, to participate in a drug and alcohol assessment, to have consistent visitations with J.D.M., to maintain stable and appropriate housing, and to maintain financial stability. After the passage of eleven (11) months, Mother was making minimal progress towards the ordered goals, so the Agency filed its first Petition for Involuntary Termination in June 2013. This first Petition was dismissed by the Court because every effort had not been made to provide assistance to Mother. N.T. 132. Consequently, Mother was given a second chance to remedy her incapacity and show the Court she was capable of caring for J.D.M.

Since June of 2013, Mother's housing has continued to be sporadic and irregular. She moved on numerous occasions in the past year and started living with her mother and mother's boyfriend only two weeks prior to the December 10, 2013 termination hearing. N.T. 110-111. Faced with such a late promise to maintain stable housing, the Court may properly disregard such action as disingenuous. *See In re R.M.G.*, 997 A.2d 339, 349 (Pa. Super. 2010). At one point she returned to the same unsafe household she was living in when J.D.M. was initially removed from her custody. Mother's employment has been equally unpredictable as she did not have a regular working schedule and did not know exactly when she was going to be called to work again. N.T. 111-112. Also, Mother is not enrolled in school as she withdrew from high school and is on the waiting list to attend an alternative school.

Admittedly, Mother did attend one drug and alcohol evaluation, yet she scheduled and failed to attend two others on August 17, 2013 and November 7, 2013. Mother has also attended visitations with J.D.M where she acted appropriately and showed him love and care, but she has missed numerous others and failed to attend a July 18, 2013 parental fitness assessment. N.T. 41.

Although Mother's efforts are sincere and the Court empathizes with her struggle, she has not done enough to prove that she is or will be capable of caring for J.D.M. In fact, the record reflects that Mother has difficulty caring for herself. Dr. MacGregor concluded it would be unlikely for Mother to be able to achieve the personal stability necessary for an adult lifestyle within three to five years. N.T. 14. Crediting Dr. MacGregor's evaluation, the Court found that Mother's "current level of functioning is unstable and inadequate and does not meet the minimally adequate level for parenting young children." N.T. 132. Furthermore, "it is unlikely over the next three to five years [Mother] will achieve or maintain personal stability[.]" N.T.

132. "[S]hes experiencing extreme difficulty maintaining safety for herself and [is] not in a position to be a primary caretaker." N.T. 132.

It has long been established that "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 immediate physical and emotional needs." *In re C.M.S.*, 832 A.2d 457, 462 (Pa. Super. 2003) (internal quotations and citations omitted). Mother is unable even to provide for her own needs let alone her child's. She has failed to parent, and J.D.M. has gone for over seventeen (17) months without the parental care necessary for his physical and mental well-being. Such incapacity has not been remedied thus far and therefore has not been remedied within a reasonable period of time. The Court finds, by clear and convincing evidence, that the requirements of § 2511(a)(2) have been satisfied.

b. 23 Pa. C.S. § 2511(a)(5)

Turning next to 23 Pa. C.S. § 2511(a)(5), parental rights may be terminated if:

> (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.

23 Pa. C.S. § 2511(a)(5). The required elements of subsection (a)(5) are:

> (1) the child has been removed from parental care for at least six months; (2) the conditions which led to the child's removal or placement continue to exist; (3) the parents cannot or will not remedy the conditions which led to removal or placement within a reasonable period time; (4) the services reasonably available to the parents are unlikely to remedy the conditions which led to removal or placement within a reasonable period of time; and (5)

> termination of parental rights would best serve the needs and welfare of the child.

In re B.C., 36 A.3d 601, 607 (Pa. Super. 2012) (citing *In re Adoption of M.E.P.*, 825 A.2d 1266, 1273–74 (Pa. Super. 2003)). As previously stated, our legislature has required parents to provide a minimum level of care to their children. *See In re Z.P.*, 994 A.2d 1108, 1118 (Pa. Super. 2010). After a reasonable period of time has elapsed following a child's placement, parental rights can be terminated if a parent cannot or will not meet the minimum parental requirements. *Id.*

First (1), it is undisputed that J.D.M. has been removed from Mother's care for more than six (6) months. J.D.M. came into care on June 22, 2012, was adjudicated dependent on July 23, 2012, and Mother's rights were terminated on December 10, 2013. When Mother's rights were terminated, J.D.M. had been in care for over seventeen (17) months. The second issue Mother raises on appeal implicates the second (2) and third (3) required elements of § 2511(a)(5): whether the conditions which led to removal and placement continue to exist, and the parent cannot or will not remedy the conditions in a reasonable period of time. *In re B.C.*, 36 A.3d 601, 607 (Pa. Super. 2012) (citing *In re Adoption of M.E.P.*, 825 A.2d 1266, 1273–74 (Pa. Super. 2003)). Mother argues that her actions did not lead to J.D.M.'s original placement in July 2012 and that she was an abused minor at the time and should have been placed with her child. Such arguments are not relevant to the Court's analysis. J.D.M. was placed because he had various injuries, the causes of which were unknown. At the time, he was living with Mother in a household of several people and Mother could not offer any explanation of how the injuries occurred. N.T. 37. Regardless of who or what caused J.D.M.'s injuries, Mother was responsible for his well-being. J.D.M. was in Mother's custody and under her protection when the injuries occurred, evidencing her inability to provide J.D.M. with a safe and secure home.

As explained above in our findings pursuant to § 2511(a)(2), as of the date of the termination hearing, Mother has not shown the Court that she is able to meet the Agency's goals and properly care for J.D.M. after over seventeen (17) months in foster care. Of special concern here is Mother's continued lack of adequate housing. J.D.M. was injured while living in questionable circumstances and Mother has not found a reliable, long-term home where she can guarantee J.D.M.'s safety. At the termination hearing, Mother was living with her mother and her mother's boyfriend, yet little evidence (besides Mother's testimony) was presented to show that it was a safe and supportive household, capable of protecting J.D.M. indefinitely. Overall, Mother has made minimal progress, the conditions which led to the removal and placement of J.D.M. continue to exist, and Mother has been unable to remedy them within a reasonable period of time.

Fourth (4), we must determine whether the services reasonably available to Mother are unlikely to remedy the conditions which led to removal or placement within a reasonable period of time. Mother argues on appeal that the Court erred in finding that the Agency provided her with adequate services to reunify her family. The Court disagrees. Mother specifically takes issue with the Agency's lack of referral for a family group decision-making [hereinafter "FGDM"] conference. However, the Agency had attempted to organize a FGDM conference in May 2013 to include Mother, both J.D.M. and Mother's new baby, and Mother's boyfriend. N.T. 64. This conference never occurred because Mother's relationship with her boyfriend ended and he was arrested for assaulting her in June 2013. N.T. 64-65. Consequently, the Agency's efforts were frustrated because the combined conference was no longer feasible. N.T. 64-65.

By July 25, 2013, J.D.M. had been in placement for a year. At the July 25, 2013 permanency review hearing, the Court dismissed the Agency's Petition for Involuntary Termination of Parental Rights, kept the goal at reunification, and set a reunification goal date of September 2013. *See* Order of Court, June 25, 2013; Permanency Review Order, June 26, 2013. The Court also ordered the Agency to make a referral for Mother to participate in a FGDM conference. N.T. 63. The Agency did complete a referral to PA Counseling, the provider of the FGDM service, the day after the June 25, 2013 hearing, but the Agency's contract with PA Counseling ended in July 2013. N.T. 63-64. Unfortunately, the Agency did not contract with a new provider until September 2013. N.T. 63-64. In September, the Agency immediately tried to contact Mother to sign the necessary release to start the FGDM process, but was unable to obtain a signed release from her until October 14, 2013. N.T. 63-64.

Although a FGDM conference never occurred before the December 10, 2013 termination hearing, the Agency's efforts to schedule one were impeded by Mother's lack of external support. At the termination hearing the Agency explained, "[t]he biggest issue is getting in consistent contact with [Mother] to help generate a list of relatives and support people to participate in." N.T. 64. The Agency "would have hoped that [the] conference would have taken place before this hearing was even scheduled back in November. We were hoping to try to get it moving along quickly. But we didn't have any relatives to even start with. That section of the referral was left blank." N.T. 67.

Examining the Agency's overall efforts to provide Mother with services, the record reflects the difficulty the Agency faced contacting Mother and encouraging her to follow through with her commitments during the entirety of J.D.M.'s placement. "[A]n agency is not required to provide services indefinitely if a parent is either unable or unwilling to apply the instruction

given." *In re A.L.D.*, 797 A.2d 326, 340 (Pa. Super. 2002) (citing *In re R.T.*, 778 A.2d 670 (Pa. Super. 2001)). The Agency set up consistent visitations, made referrals for parental fitness assessments, tried to organize FGDM conferences, and tried to remain in contact with Mother in an effort to help her fulfill her obligations. Despite the Agency's efforts, Mother remained difficult to communicate with and her progress towards reunification remained minimal. At the termination hearing, the Court stated, "[i]t's impossible to provide services when its just a constant hunt of trying to locate [Mother] . . . . So the Agency is really at a loss as how to provide services when there's not even any means to contact the person whose services we're trying to provide." N.T. 126. "If a parent fails to cooperate or appears incapable of benefiting from reasonable efforts supplied over a realistic period of time, the agency has fulfilled its mandate and upon proof of satisfaction of the reasonable good faith effort, the termination petition may be granted." *In re A.L.D.*, 797 A.2d at 340 (citation omitted). The Court dismissed the Agency's June 12, 2013 Termination Petition in an effort to give Mother more time to comply and the Agency more time to provide. Five months later, at the December 10, 2013 termination hearing, Mother still was not in a position to care for J.D.M. At that time, J.D.M. had been in placement for over seventeen (17) months and it is clear to the Court that Mother cannot remedy the conditions which led to J.D.M.'s removal within a reasonable period of time.

Fifth (5), we must determine whether termination would serve the needs and welfare of the child. Our analysis here "accounts for the needs of the child in addition to the behavior of the parent." *In re C.L.G.*, 956 A.2d 999, 1008-09 (Pa. Super. 2008). Mother argues that the Court erred in finding the child's bond with foster parents and adjustment to pre-adoptive foster home adequate substitute for evaluating the bond and attachment child has with Mother. In support, Mother asserts that the Foster Care Case Manager reported that J.D.M calls Mother "mommy" or

"mama" and displays affection and an attachment to her, and that he invites Mother to sit with him, brings toys to her, exchanges kisses, is comforted by her with kisses on "boo boos" listens to her when redirected and that Mother is able to soothe him.

Addressing Mother's argument, the Court "must consider the role of the parental bond in the children's lives" when deciding whether termination would serves the children's needs and welfare. *In re Adoption of M.E.P.*, 825 A.2d 1266, 1275 (Pa. Super. 2003) (quoting *P.A.B.*, 570 A.2d 522, 528 (Pa. Super. 1990)). When analyzing the parental bond, the Court must adhere to the unique facts and circumstances of each case, and there is no formal bonding evaluation requirement. *In re K.M.*, 53 A.3d 781, 791 (Pa. Super. 2012). "Indeed, in assessing the parental bond, the orphans' court is permitted to rely upon the observations and evaluations of social workers." *In re K.M.*, 53 A.3d 781, 791 (Pa. Super. 2012) (citing *In re Z.P.*, 994 A.2d 1108, 1121 (Pa. Super. 2010)).

Mother is accurate that the record reflects that J.D.M. calls Mother "mommy" or "mama," and displays some affection and attachment to her during their visits. Thus, the Court recognizes that some bond exists; yet our analysis of the child's needs and welfare cannot end there. "In addition to a bond examination, the trial court can equally emphasize the safety needs of the child, and should also consider the intangibles, such as the love, comfort, security, and stability the child might have with the foster parent." *In re K.M.*, 53 A.3d 781, 791 (Pa. Super. 2012) (citation omitted).

It is clear to the Court that termination serves J.D.M.'s needs and welfare because of the "inconsistent visitation [of Mother], the behavior issues experienced by [J.D.M.] after visits with [Mother], the bond that's been established with his foster parents and his excellent adjustment to his foster home." N.T. 134. The caseworker testified that although Mother and J.D.M. had

appropriate and interactive visitations, J.D.M. struggled when his foster mother would leave. N.T. 55. Also, Mother's visits were inconsistent and "when [J.D.M.] does see his mother, there's usually some behavior in the foster home that follows that, some extensive nightmares, a lot less sleep overnight. . . . More frequent and severe temper tantrums during the days." N.T. 55-56. The Court emphasized its serious concern over Mother's lack of consistent visits at the termination hearing. N.T. 133.

Ultimately, the Court did not consider J.D.M.'s bond with his foster parents instead of evaluating the bond and attachment he has with Mother. To the contrary, the Court considered J.D.M.'s bond with Mother *and* the love, comfort, security, and stability that his foster parents have provided him, finding the latter more valuable and important to J.D.M.'s needs and welfare. Moreover, "the mere existence of an emotional bond does not preclude the termination of parental rights." *In re K.M.*, 53 A.3d 781, 791 (Pa. Super. 2012). Thus, upon the finding that termination would be serve the needs and welfare of J.D.M., the Court finds, by clear and convincing evidence that all the requirements of § 2511(a)(5) have been met.

c. 23 Pa. C.S. § 2511(a)(8)

Mother's parental rights were also terminated pursuant to 23 Pa. C. S. § 2511(a)(8) which states:

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

23 Pa. C.S. § 2511(a)(8). Subsection (a)(8) requires proof of the following factors:

> (1) the child has been removed from parental care for 12 months or more from the date of removal; (2) the conditions which led to the removal or placement of the child continue to exist; and (3)

> termination of parental rights would best serve the needs and welfare of the child.

In re Z.P., 994 A.2d 1108, 1118 (Pa. Super. 2010) (citations omitted). To terminate rights under this subsection, the Court is not required to evaluate a parent's willingness or ability to change the conditions that caused their child's initial placement. *In re Adoption of T.B.B.*, 835 A.2d 387, 396 (Pa. Super. 2003). Nor is the Court required to consider "the availability or efficacy of Agency services." *In re Z.P.*, 994 A.2d at 1118. The Agency is required to make "reasonable efforts to promote family stability and preserve family unity." *In re J.T.*, 817 A.2d 505, 509 (Pa. Super.2003). Yet, the Agency is not required to "extend services beyond what our legislature has deemed a reasonable time after state intervention." *Id.*

First (1), it is undisputed that J.D.M. has been removed from Mother's care for twelve (12) months or more. The Petition for Involuntary Termination of Parental Rights was filed on October 9, 2013, and the termination hearing was held on December 10, 2013. J.D.M. had been removed from Mother's care for over fifteen (15) and seventeen (17) months respectively. Next, addressing the second (2) and third (3) factors, the Court has already discussed each in our analysis of 23 Pa. C.S. § 2511(a)(5) above. The conditions which led to the removal of J.D.M. continue to exist, and the termination of Mother's rights would best serve J.D.M.'s needs and welfare. *See supra* pg. 14-20.

d. 23 Pa. C.S. § 2511(b)

Finally, once grounds for termination have been established pursuant to § 2511(a), the Court must turn to § 2511(b) to consider whether the termination is in the child's best interests. *See In re Adoption of S.P.*, 47 A.3d 817, 820 (Pa. 2012). § 2511(b) states:

> **(b) Other considerations.**--The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of

> environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

23 Pa. C.S. § 2511(b). The Court has already touched upon whether termination is in J.D.M.'s best interests in our analysis of whether termination would serve J.D.M.'s needs and welfare pursuant to 23 Pa. C. S. § 2511(a)(5) & (8). However, "the focus in terminating parental rights is on the parent, under Section 2511(a), whereas the focus in Section 2511(b) is on the child." *In re C.L.G.*, 956 A.2d 999, 1008 (Pa. Super. 2008). J.D.M.'s foster family has been taking care of his developmental, physical and emotional needs since he was nine months old. J.D.M. has been in the same foster home since his placement, and there is little evidence to indicate that Mother will be able to assume care of J.D.M. now or in the near future. *See* N.T. 54-56. The Court notes that there is evidence of some bond between J.D.M. and Mother, yet the detriment he will suffer, if any, will likely be slight because he is so young and has been cared for by his foster family for a majority of his life. *See* N.T. 126. J.D.M. is comfortable with his foster family and has bonded with them as well. N.T. 55. He deserves to know where his home will be, now and in the future. His foster family is willing to offer him that home, and it is in his best interests to terminate Mother's rights and open the door for his adoption.

II. Goal Change

In a goal change proceeding, the Court is required to focus on the child and determine the goal that is in the child's best interest. *See In re A.L.D.*, 797 A.2d 326, 339 (Pa. Super. 2002) (citation omitted). The best interest of the child, and not the interests of the parent, must direct the trial court. *See In re R.I.S.*, 36 A.3d 567, 573 (Pa. 2011). Our appellate courts have explained:

> [T]he decision to allow CYS to change the service plan goal from reunification to adoption is not merely a minor decision permitting a slight shift in the emphasis of CYS' social services. As a practical and legal matter, an order by the juvenile court changing the child's placement goal from reunification to adoption ends any dispute that may exist between CYS and the parent as to the adequacy of CYS' services aimed at reuniting the parent with his/her children and, of course, as to whether CYS had selected the most appropriate goal for this family. By allowing CYS to change its goal to adoption, the trial court has decided that CYS has provided adequate services to the parent but that he/she is nonetheless incapable of caring for the child and that, therefore, adoption is now the favored disposition. In other words, the trial court order is the decision that allows CYS to give up on the parent.

In re A.L.D., 797 A.2d at 339 (citation omitted). Indeed, "[a]lthough the Commonwealth is willing to take on the obligation to help parents assume their irreducible minimum parental responsibilities," that obligation "is not indefinite nor has the Commonwealth made itself guarantor of the success of the efforts to help parents assume their parental duties." *Id.* at 340.

Appellate review of a goal change determination is deferential. *See R.I.S.*, 36 A.3d at 573. The reviewing court is required to accept the findings of fact and credibility determinations of the trial court if they find support in the record, but is not required to accept any inferences or conclusions of law. *See In re R.J.T.*, 9 A.3d 1179, 1190 (Pa. 2010). The standard of review is an abuse of discretion. *See id.* A trial court abuses its discretion if its judgment is so "manifestly unreasonable, that the court disregarded the law, or that its action was a result of partiality, prejudice, bias or ill will." *In re R.P.*, 956 A.2d 449, 455 (Pa. Super. 2008) (internal quotations omitted) (citation omitted). Our appellate courts have stated, "[w]hen the trial court's findings are supported by competent evidence of record, we will affirm 'even if the record could also support an opposite result.'" *In re N.C.*, 909 A.2d 818, 823 (Pa. Super. 2006) (quoting *In re Adoption of R.J.S.*, 901 A.2d 502, 506 (Pa. Super. 2006)). Indeed, the trial court, having "presided over several other hearings with the same parties" and possessing a "longitudinal

understanding of the case and the best interest of the individual child involved" is in the best position to "gauge the likelihood of the success of the current permanency plan." *See In re R.J.T.*, 9 A.3d at 1190.

The disposition of dependent children is controlled by the Juvenile Act. *In re R.M.G.*, 997 A.2d 339, 345 (Pa. Super. 2010). At each permanency review hearing, including a goal change proceeding, the trial court must make several determinations mandated by statute, examining whether the current goal remains feasible and continues to be in the best interest of the child. *See* 42 Pa. C.S. § 6351. Section 6351 provides in pertinent part:

> **(f) Matters to be determined at permanency hearing.--** At each permanency hearing, a court shall determine all of the following:
> (1) The continuing necessity for and appropriateness of the placement.
> (2) The appropriateness, feasibility and extent of compliance with the permanency plan developed for the child.
> (3) The extent of progress made toward alleviating the circumstances which necessitated the original placement.
> (4) The appropriateness and feasibility of the current placement goal for the child.
> (5) The likely date by which the placement goal for the child might be achieved.
> (5.1) Whether reasonable efforts were made to finalize the permanency plan in effect.
> (6) Whether the child is safe.
> . . .
> (9) If the child has been in placement for at least 15 of the last 22 months . . . .
> (10) If a sibling of a child has been removed from his home and is in a different placement setting than the child, whether reasonable efforts have been made to place the child and the sibling of the child together or whether such joint placement is contrary to the safety or well-being of the child or sibling.
> (11) If the child has a sibling, whether visitation of the child with that sibling is occurring no less than twice a month, unless a finding is made that visitation is contrary to the safety or well-being of the child or sibling.

42 Pa. C.S § 6351(f). Under § 6351, "[s]afety, permanency, and well-being of the child must take precedence over **all** other considerations," including the parent's rights and wishes. *In re R.M.G.*, 997 A.2d at 347 (quoting *In re D.P.*, 972 A.2d 1221, 1227 (Pa. Super. 2009)) (emphasis in original). Even if a parent substantially complies with a reunification plan, a goal change to adoption may still be appropriate. *See In re R.M.G.*, 997 A.2d at 347.

Mother argues that the Court's decision to set the placement goal at adoption is not supported by clear and convincing evidence and constitutes an abuse of discretion for the following reasons: Mother's actions did not lead to the child's original placement in July 2012, Mother was an abused minor when her child was placed and she should have been placed with her child. Also, the Agency failed to provide Mother integral services that she repeatedly requested, was approved for, and for which provider referral was made, including services recommended by the psychologist who performed the parental fitness assessment. Additionally, the Agency moved on the opinion that Mother's functioning is impaired to such a degree that she cannot benefit from therapeutic interventions or utilize new information, which is controverted by evidence in the record. Additionally, Mother has a strong bond with her child, and additional services could be provided to Mother to assist in reunification of the family.

Most of Mother's arguments have been discussed by the Court in the termination proceedings above. However, the Court will address Mother's argument that essentially the Agency did not make reasonable efforts to provide her with adequate services. The Court disagrees. The Agency is not required to provide services perpetually if Mother is unable or unwilling to comply. *See In re A.L.D.*, 797 A.2d at 340. As explained above and as detailed in the record, the Agency did put forth reasonable efforts to make services available to Mother, but such efforts were impeded by Mother's perpetual lack of communication and attendance.

While the goal of intervention by the Agency is to reunite the family, where reasonable efforts over an appropriate period of time have failed, the goal must change to focus upon termination of parental rights, to free the child for adoption. *See id.* (citation omitted). Moreover, the proper inquiry is whether the parent has taken action to ensure the safety and well-being of their child. J.D.M. has been in placement more than seventeen (17) months already. It is not in his best interest to continue to wait in the limbo of foster care while Mother proves her ability to comply with the Agency's requirements for reunification. The Superior Court has made it clear that the aim of the Juvenile Act "is to prevent children from languishing indefinitely in foster care, with its inherent lack of permanency, normalcy, and long-term parental commitment." *In re N.C.*, 909 A.2d 818, 823 (Pa. Super. 2006) (citations omitted).

As of the date of the termination hearing, Mother was struggling to provide for herself, and she is not yet able to take care of her young child. J.D.M. cannot be required to wait another three to five years in placement for the goals in the reunification plan to be achieved; thus, the Court finds the goal of reunification no longer appropriate.

CONCLUSION

The Court acknowledges the obstacles Mother has faced in attempting to put herself in a position where she can properly care for J.D.M.. Despite the grounds under the statute having been clearly and convincingly proven, the Court takes no pleasure in the carrying out of its duty in ordering the termination of parental rights and the goal change to adoption. Yet J.D.M. needs permanency and stability, and he is doing well in his foster home. Mother no doubt loves her child, yet her love is not sufficient when J.D.M. also needs protection and care. Accordingly, the grounds for termination of parental rights under the statute having been proven and in the child's best interest, and goal change being in the child's best interest, the Court respectfully requests

the Superior Court dismiss the instant appeal and affirm the termination of parental rights and the goal change to adoption.

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF PENNSYLVANIA – FRANKLIN COUNTY BRANCH

IN RE: ADOPTION OF J.D.M.	:	**Orphans' Court Division**
	:	
	:	**30 - ADOPT - 2013**
A Minor	:	
	:	
	:	
	:	**Honorable Carol L. Van Horn**

IN INTEREST OF:	:	**Juvenile Court Division**
	:	
J.D.M.,	:	**CP28-DP-0033-2012**
A Minor Male Child	:	
	:	
Born: September 13, 2011	:	
	:	**Honorable Carol L. Van Horn**

ORDER OF COURT

AND NOW THIS 29th **day of January, 2013,** pursuant to Pa. R.A.P. 1931(c),

IT IS HEREBY ORDERED that the Clerk of Courts of Franklin County shall promptly transmit to the Superior Court of Pennsylvania the records in these matters along with the attached Opinion *sur* Pa. R.A.P. 1925(a).

The Clerk shall immediately docket this Opinion and Order of Court and record in the docket the date it was made. The Clerk shall forthwith furnish a copy of the Opinion and Order of Court, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.

By the Court,

Carol L. Van Horn

Carol L. Van Horn, J.

copies:
Deborah Dresser Neiderer, Esq., Counsel for N.M./Mother
Brian C. Bornman, Esq., Counsel for the Agency
Michael J. Connor, Esq., Counsel for Victor Van Vranken
Kristin B. Hamilton, Esq., GAL
Anne Rotz, Esq., Counsel for Noah Medolla