

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: K.Y.R., D.Y.R., Minors,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
	:	
APPEAL OF: K.S., MOTHER	:	
	:	
	:	
Appellant	:	No. 2807 EDA 2012

Appeal from the Decrees entered September 12, 2012
in the Court of Common Pleas of Lehigh County,
Orphans' Court Division, at No(s): A2011-0008; A2011-0009

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS and MUSMANNO, J.J.

MEMORANDUM BY MUSMANNO, J.: Filed: March 18, 2013

K.S. ("Mother") appeals from the September 12, 2012 Decrees granting the Lehigh County Office of Children and Youth Services' ("LCOCYS") Petitions to involuntarily terminate her parental rights to her female children with I.R. ("Father"), K.Y.R., and D.Y.R., ("Children"), pursuant to section 2511(a)(1), (2), (5), (8), and (b) of the Adoption Act, 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8), and (b).¹ We affirm.

K.Y.R. was born in August 2005, and D.Y.R. was born in July 2009. On February 16, 2011, LCOCYS filed a Petition to terminate the parental rights of Mother and Father to the Children. The trial court initially held hearings on the Petitions on October 6, 2011, and October 7, 2011. At the hearing on

¹ On September 12, 2012, the trial court also involuntarily terminated the parental rights of Father. Father has not filed an appeal, and he is not a party to this appeal.

October 6, 2011, LCOCYS presented the testimony of Dalton Rumfield, Jr., who has a private counseling practice, Alliance Counseling and Wellness Coaching. N.T., 10/6/11, at 10. LCOCYS also presented the testimony of Heather Hudson, a LCOCYS caseworker for D.Y.R. *Id.* at 40-41. Father testified on his own behalf. *Id.* at 110.

After a continuance, the trial court conducted a hearing on November 17, 2011, at which Mother testified on her own behalf. N.T., 11/17/11, at 4. When a review of the record raised questions relating to the bond between the Children and their parents, the trial court scheduled a hearing, limited to that issue, for June 6, 2012. N.T., 6/6/12, at 14; Trial Court Adjudication, 9/12/12, at 19 n.1. At that hearing, LCOCYS presented the testimony of Heather Reed, a LCOCYS social worker, who testified as an expert in child development, regarding the Children's bond with their parents and foster parent. N.T., 6/6/12, at 15, 17, 19.

On September 12, 2012, the trial court entered its Decrees terminating Mother's parental rights with regard to the Children under section 2511(a)(1), (2), (5), (8), and (b) of the Adoption Act. On October 1, 2012, Mother timely filed her Notice of appeal, along with her Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

On appeal, Mother presents the following claim for our review:

Did the trial court err as a matter of law and/or abuse it's [*sic*] discretion in finding that the Lehigh County Office of Children

and Youth Services met the requirements of 23 Pa.C.S.A. § 2511(b) by clear and convincing evidence?

Brief for Appellant at 7.

In reviewing an appeal from the termination of parental rights, we review the appeal in accordance with 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 by the record. *In re: R.J.T.*, 608 Pa. 9, 9 A.3d 1179, 1190 (Pa. 2010). If the factual findings are supported, appellate courts review to determine if the trial court made an error of law or abused its discretion. *Id.*; *R.I.S.*, [36 A.3d 567, 572 (Pa. 2011) (plurality)]. As has been often stated, an abuse of discretion does not result merely because the reviewing court might have reached a different conclusion. *Id.*; *see also Samuel Bassett v. Kia Motors America, Inc.*, 34 A.3d 1, 51 (Pa. 2011); *Christianson v. Ely*, 838 A.2d 630, 634 (Pa. 2003). Instead, a decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will. *Id.*

As [the Pennsylvania Supreme Court] discussed in *R.J.T.*, there are clear reasons for applying an abuse of discretion standard of review in these cases. [The Supreme Court] 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. *R.J.T.*, [608 Pa. at 28-30], 9 A.3d at 1190. 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[, an appellate court] 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 Atencio, [539 Pa. 161, 165,] 650 A.2d 1064, 1066 (Pa. 1994).

In re Adoption of S.P., 47 A.3d 817, 826-27 (Pa. 2012).

The burden is upon the petitioner to prove by clear and convincing evidence that the asserted grounds for seeking the termination of parental rights are valid. ***In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009).

Moreover, we have explained that

[t]he standard of clear and convincing evidence is defined as testimony that is so “clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitance, of the truth of the precise facts in issue.”

Id. (quoting ***In re J.L.C.***, 837 A.2d 1247, 1251 (Pa. Super. 2003)).

Parental rights may be involuntarily terminated where any one subsection of Section 2511(a) is satisfied, along with consideration of the subsection 2511(b) provisions. ***In re Adoption of R.J.S.***, 901 A.2d 502, 508 n.3 (Pa. Super. 2006). We will focus on section 2511(a)(1) and (b), which provide, in relevant part, as follows:

§ 2511. Grounds for involuntary termination

(a) General rule.--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

- (1) The parent[,] by conduct continuing for a period of at least six months immediately preceding the filing of the petition[,] either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

* * *

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

23 Pa.C.S.A. § 2511.

Although the trial court granted the Petition to terminate Mother's parental rights under section 2511(a) and (b), Mother challenges only the trial court's termination under section 2511(b). Accordingly, Mother has waived any challenge to section 2511(a). *See Krebs v. United Refining Co.*, 893 A.2d 776, 797 (Pa. Super. 2006) (stating that this Court "will not ordinarily consider any issue if it has not been set forth in or suggested by an appellate brief's statement of questions involved, Pa.R.A.P. 2116(a)").

In reviewing the evidence in support of termination under section 2511(b), we consider whether termination of parental rights would best serve the developmental, physical and emotional needs and welfare of the child. *See In Re C.M.S.*, 884 A.2d 1284, 1286-87 (Pa. Super. 2005). "Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child." *Id.* at 1287 (citation omitted). "The court must also discern the nature and status of the parent-

child bond, with utmost attention to the effect on the child of permanently severing that bond." *Id.*

In its Adjudication, the trial court set forth its findings of fact and conclusions of law regarding the termination of Mother's parental rights. **See** Trial Court Adjudication, 9/12/12, at 1-20 (setting forth the trial court's findings of fact), 29-34 (setting forth the trial court's legal analysis and conclusions regarding termination of Mother's parental rights pursuant to 23 Pa.C.S.A. § 2511(b)). The trial court's findings are supported by the evidence of record, and we agree with the legal analysis and conclusion of the trial court, as set forth in its Adjudication. **See id.** Accordingly, we affirm on the basis of the trial court's Adjudication with regard to Mother's claim.

Decrees affirmed.

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

ORPHAN'S COURT DIVISION

In re: Involuntary Termination of Parental Rights to:

K.Y.R.	:	No.: A2011-0008
	:	
and	:	
	:	
D.Y.R.	:	A2011-0009
	:	
Minors	:	

APPEARANCES:

John D. Reinhart, Esquire
On behalf of Lehigh County Office of Children & Youth Services

Catherine L. Kollet, Esquire
On behalf of both minor children

Teresa I. Resendez, Esquire
On behalf of Katiria Santiago, Mother

Shannon P. Smith, Esquire
On behalf of Ivan Yamil Rodriguez, Father

ADJUDICATION

CAROL K. McGINLEY, P.J.

FINDINGS OF FACT

1. K.Y.R. was born on August 24, 2005.
2. D.Y.R. was born on July 31, 2009.

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 COURT HOUSE
 ALLENTOWN, PA.
 CLERK OF ORPHANS
 COURT DIVISION
 LEHIGH COUNTY

3. The biological mother of the children is Katiria Santiago (Mother).
4. The biological father of the children is Ivan Rodriguez (Father).
5. Lehigh County Office of Children and Youth Services (LCOCYS) first became involved with this family as a result of a referral in June of 2004 involving allegations of inappropriate physical discipline. That referral was closed one month later. N.T. October 6, 2011, p. 42.
6. A second referral was made on June 18, 2006, as a result of Mother's arrest on drug charges. K.Y.R. and an older sibling not involved in this termination action were found with people who were intoxicated. Father was already incarcerated on a simple assault charge. The children were taken by police into custody. N.T. October 6, 2011, pp. 42-44.
7. K.Y.R. was adjudicated dependent by Order dated July 18, 2006. Mother was ordered to comply with the following recommendations: resolve all criminal charges; complete a drug and alcohol evaluation and follow through with recommended treatment when released from prison; report to Substance Abuse Screening Services, Inc. (SASSI) for urinalysis; and cooperate with the LCOCYS.

Father was ordered to comply with the following recommendations: cooperate with LCOCYS; resolve all criminal charges and contact LCOCYS upon his release from Lehigh County Prison to be considered a resource for his daughter. P-1 Order of Adjudication and Disposition dated July 18, 2006; N.T. October 6, 2011, p. 45.

8. Mother was released from prison on November 8, 2006. N.T. October 6, 2011, p. 46.
9. The first permanency review hearing was on December 21, 2006. Mother and Father both attended; Father was brought over from Lehigh County Prison. There was substantial compliance with the permanency plan. Father was as cooperative as possible from prison and his visits with K.Y.R. were appropriate. Since Mother's release, she was extremely cooperative with recommended services. She had clean urines and her visits with K.Y.R. went well. She was ordered to comply with the following conditions: cooperate with the conditions of her parole; submit to urine screens at SASSI twice a week; continue to attend Lehigh Valley Drug and Alcohol Intake for drug and alcohol treatment and follow through with their recommendations; obtain and maintain a legal and verifiable source of income; and obtain and maintain stable housing.

Father remained incarcerated at the date of this review hearing, but was ordered to comply with the following conditions: resolve criminal issues and cooperate with parole upon his release from prison; attend SASSI as determined by LCOCYS; obtain and maintain a legal and verifiable source of income; obtain and maintain stable housing upon release from prison; attend the Lehigh Valley Drug and Alcohol Intake for drug and alcohol treatment upon release from prison and follow through with the recommendations. P-1 Permanency Hearing Determinations and Order dated December 21, 2006, signed and filed January 16, 2007; N.T. October 6, 2011, pp. 46-47.

10. K.Y.R. had surgery in April of 2007 to put tubes in her ears. Mother requested to be present the day of the surgery, but failed to attend. N.T. October 6, 2011, pp. 106-107.
11. On May 9, 2007, Mother was incarcerated for violating her probation/parole by not checking in with her probation officer. N.T. October 6, 2011, p. 48.
12. The next permanency review hearing was June 21, 2007. Mother and Father were brought to the hearing from Lehigh County Prison. There was minimal compliance with the permanency plan and little progress towards alleviating the circumstances which necessitated the original placement. Mother was ordered to comply with the following conditions: resolve all criminal issues and comply with her probation and parole; submit to urine screens at SASSI twice a week upon her release from prison; go to Lehigh Valley Drug and Alcohol Intake for drug and alcohol treatment and follow through with recommendations; following release from prison, obtain and maintain a legal and verifiable source of income, obtain and maintain stable housing; and cooperate with scheduled visitation.

Father was ordered to comply with the following conditions: comply with probation and parole; obtain and maintain stable housing upon release from prison; go to Lehigh Valley Drug and Alcohol Intake for treatment upon release from prison and follow through with recommendations; comply with LCOCYS in all other respects; and cooperate with scheduled visitation. P-1 Permanency Hearing Determinations and Order dated June 21, 2007, signed July 3, 2007 and filed July 5, 2007; N.T. October 6, 2011, pp. 48-49.

13. Father, who remained incarcerated during this time, maintained consistent biweekly visits with K.Y.R. during this review period; he did not miss any visits. Mother consistently maintained biweekly visits from January of 2007 through the end of April of 2007. Mother missed a visit on April 26, 2007, for failing to submit to urinalysis; she missed the next visit on May 9, 2007, due to her arrest; she requested to resume visits on May 14, 2007; and on May 23, 2007, visits were resumed. P-1 Permanency Hearing Determinations and Order dated June 21, 2007, signed July 3, 2007 and filed July 5, 2007, Exhibit A.
14. Biweekly visitation continued until October 2007; in November of 2007, visitation was increased to once per week. N.T. October 6, 2011, p. 49.
15. The next permanency review hearing was on January 10, 2008; both Mother and Father were present. Neither Mother nor Father was incarcerated and they were residing together. Mother and Father were in full compliance with the permanency plan and had made substantial progress towards alleviating the circumstances which necessitated the original placement. Mother's compliance was described as exemplary and her urinalyses were all negative. Father was compliant with urinalyses, but had a positive result for marijuana on January 2, 2008. Visitation was increased and K.Y.R. was to be returned to Mother and Father on or before 90 days as long as Mother and Father continued to comply with services. P-1 Permanency Hearing Determinations and Order dated January 10, 2008, signed and filed January 16, 2008; N.T. October 6, 2011, pp. 49-51.

16. The next permanency review hearing was on April 17, 2008; Mother was present, Father did not attend after receiving notice. Mother had substantial compliance with the permanency plan. She had tested positive for cocaine in February of 2008, but she was complying with the other services. Mother was ordered to comply with the following conditions: resolve criminal issues and comply with probation/parole; demonstrate sobriety by consistently submitting to urine screens once a week; maintain a legal and verifiable source of income and stable and legal housing; cooperate with any services deemed appropriate by LCOCYS; maintain regular contact with LCOCYS and keep them apprised of housing and contact information.

Father had no compliance with the permanency plan and there was little progress toward alleviating the circumstances which necessitated the original placement. Father did not comply with urinalysis since the January 10, 2008, hearing, and he was unsuccessfully discharged from SASSI. Father was ordered to comply with the following conditions: attend Lehigh Valley Drug and Alcohol Intake for a drug and alcohol evaluation and follow through with recommendations; demonstrate sobriety by consistently submitting urine screens three times a week; obtain and maintain a legal and verifiable source of income and maintain stable housing; cooperate with any services deemed appropriate by LCOCYS. P-1 Permanency Hearing Determinations and Order dated April 17, 2008, signed May 2, 2008 and filed May 6, 2008; N.T. October 6, 2011, pp. 51-52.

17. The next permanency review hearing was on October 2, 2008; Mother was present from the Women's Work Release Facility and Father was brought over from Lehigh County Prison. There was minimal compliance by Mother and Father with the permanency plan and minimal progress toward alleviating the circumstances which necessitated the original placement. Mother was attending SASSI, attending Counsel on Alcohol and Drug Abuse (CADA), attending individual therapy, and cooperating with LCOCYS. P-1 Permanency Review Order dated October 2, 2008, signed November 3, 2008 and filed November 4, 2008; N.T. October 6, 2011, pp. 52-53, 91.
18. The next permanency review hearing was January 15, 2009; both Mother and Father were present. Mother had moderate compliance with the permanency plan and minimal progress toward alleviating the circumstances which necessitated the original placement. Father had minimal compliance with the permanency plan and no progress toward alleviating the circumstances which necessitated the original placement. LCOCYS requested the matter not proceed to Orphans' Court for the next six months because they believed that K.Y.R. would be returned to Mother's care during that time. Mother was two months pregnant with D.Y.R. at the time of the hearing. The court ordered Mother to comply with the following conditions: submit urinalyses as requested by LCOCYS; comply with mental health treatment; comply with drug and alcohol treatment; obtain and maintain a legal and verifiable source of income and housing; and attend prenatal appointments.

Father was ordered to comply with the following conditions: submit to urinalyses three times per week; comply with substance abuse treatment; obtain a legal and verifiable source of income and housing. P-1 Permanency Review Order dated January 15, 2009, signed February 4, 2009 and filed February 5, 2009; N.T. October 6, 2011, pp. 52-54.

19. The next permanency review hearing was on July 23, 2009; Mother was present and Father was brought over from Lehigh County Prison. Father had minimal compliance with the permanency plan and no progress toward alleviating the circumstances which necessitated the original placement. Father was incarcerated on July 13, 2009 for probation violations. Mother was in substantial compliance with the permanency plan and had substantial progress toward alleviating the circumstances which necessitated the original placement. K.Y.R. was expected to be returned to Mother's care within one month of the hearing date and visitation was extended. P-1 Permanency Review Order dated July 29, 2009, signed and filed July 31, 2009; N.T. October 6, 2011, pp. 54-55.
20. D.Y.R. was born on July 31, 2009, and remained in Mother's care. N.T. October 6, 2011, p. 55.
21. A permanency review hearing was held on August 27, 2009; Mother attended and Father was brought over from Lehigh County Prison. Mother fully complied with residential services and was ready for K.Y.R. to be returned home. P-1 Permanency Review Order dated September 17, 2009, signed and filed September 22, 2009; N.T. October 6, 2011, p. 56.

22. K.Y.R. returned home to Mother's care on September 2, 2009; however, LCOCYS retained legal custody of K.Y.R. P-1 Permanency Review Order dated September 17, 2009, signed and filed September 22, 2009; N.T. October 6, 2011, p. 55.
23. The next permanency review hearing was on March 11, 2010; Mother was present and Father was brought over from Lehigh County Prison. Mother had K.Y.R. and D.Y.R. and an older sibling in her care during this review period. Mother was receiving services from Signature Family Services, cooperating with Hispanic American Organization (HAO), had income and housing and was cooperating with LCOCYS. P-1 Permanency Review Order dated April 8, 2010, signed April 10, 2010, and filed April 13, 2010; N.T. October 6, 2011, p. 57-58, 94.
24. Mother had custody of both girls from September of 2009 until June of 2010 with no problems or concerns. N.T. October 6, 2011, pp. 93-94
25. On June 11, 2010, LCOCYS took emergency custody of K.Y.R., D.Y.R., and their older sibling because Mother was experiencing mental health problems and was waiting to be admitted to Hope House, a dual diagnosis drug treatment program. In addition, LCOCYS became aware that Mother was going to be evicted from her apartment on June 14, 2010, for nonpayment of rent. Mother should have had sufficient funds to pay her rent from the disability payments she received on behalf of K.Y.R., the cash assistance she received from the Department of Public Welfare, and the financial help LCOCYS provided when she moved into the apartment.

Father was incarcerated in Lehigh County Prison and was unable to provide care. P-1 and P-2 Orders of Emergency Custody dated June 11, 2010; N.T. October 6, 2011, pp. 59, 61.

26. K.Y.R. and D.Y.R. were placed in a foster home together; it was the same foster home K.Y.R. had lived in from April to September of 2009. The girls have remained in that same foster home from June of 2010 up through the date of the October 6, 2011, hearing. N.T. October 6, 2011, pp. 60, 67.
27. Mother chose not to go to the residential treatment facility, and instead sought treatment at HAO. N.T. October 6, 2011, p. 60.
28. An adjudication hearing was held for D.Y.R. on July 15, 2010; D.Y.R. was adjudicated dependent. Mother was present and Father was brought over from Lehigh County Prison. Mother had been evicted from her apartment, relapsed in her drug addiction by using cocaine, and had mental health issues that needed to be addressed. Father remained incarcerated. Mother was ordered to comply with the following recommendations: cooperate with mental health treatment and follow through with any recommendations; complete a drug and alcohol evaluation and follow through with recommendations; obtain and maintain stable, legal income and housing; submit to random urine screening at SASSI; comply with any in-home services provided by LCOCYS for parenting; participate in some type of counseling or therapy to deal with domestic violence if parents intend to live together; contact and cooperate with LCOCYS, allow the caseworker into the home, sign needed releases; maintain contact with the

Agency; and notify LCOCYS of any changes regarding address and telephone number.

Father was ordered to comply with the following recommendations: comply with the terms set by Lehigh County Probation and Parole; and upon release from incarceration: submit to random urine screening at SASSI per the directions of LCOCYS; cooperate with mental health treatment and follow through with any recommendations; cooperate with drug and alcohol treatment and follow through with any recommendations; obtain and maintain legal and verifiable income and housing; comply with any in-home services provided by LCOCYS for parenting; and participate in some type of counseling or therapy to deal with domestic violence if parents intend to live together. P-2 Order of Adjudication and Disposition – Child Dependent dated July 15, 2010, signed and filed August 9, 2010; N.T. October 6, 2011, pp. 61-62.

29. A permanency review hearing was held on August 16, 2010; Mother was present and Father was brought over from Lehigh County Prison. Mother was in moderate compliance with the permanency plan and had minimal progress toward alleviating the circumstances which necessitated the original placement. Father had no compliance with the permanency plan and had no progress toward alleviating the circumstances which necessitated the original placement. Mother and Father were ordered to comply with the same recommended services specified during the last hearing and enumerated in the prior order. P-1

Permanency Review Order dated August 16, 2010, signed August 17, 2010, and filed August 18, 2010.

30. A permanency review hearing was held on October 7, 2010; Mother was not present after receiving notice and Father was brought over from Lehigh County Prison. There was no compliance with the permanency plan and no progress toward alleviating the circumstances which necessitated the original placement by either Mother or Father during this review period. Mother relapsed into illegal substance abuse and did not comply with any court-ordered services during the last review period. Mother voluntarily shortened the duration of her visits with her children, and, accordingly, the visitation was reduced from weekly visits to biweekly. Father remained incarcerated. Mother and Father were ordered to comply with the same recommended services stated in the last hearing and order. P-1 and P-2 Permanency Review Order dated October 22, 2010, signed October 22, 2010, and filed October 26, 2010; N.T. October 6, 2011, p. 71.
31. A permanency review hearing was held on March 21, 2011; Mother and Father were both present. Mother and Father had minimal compliance with the permanency plan and minimal progress toward alleviating the circumstances which necessitated the original placement. It was noted in the order that both Mother and Father had recently begun to comply with court-ordered services, but only after termination of parental rights petitions were filed. P-1 and P-2 Permanency Review Order dated, signed and filed March 30, 2011; N.T. October 6, 2011, p. 96.

32. Mother has not complied with mental health treatment. Mother went to a drug and alcohol rehabilitation facility's intake on March 1, 2011, the day before her scheduled pre-trial conference; she was admitted on March 2, 2011, the day the pre-trial hearing was scheduled in this matter. There were several other available days for Mother's intake prior to the scheduled court dates, but Mother failed to go during the earlier time. N.T. October 6, 2011, pp. 63-64.
33. Mother was in a drug treatment facility again in August of 2011. N.T. October 6, 2011, pp. 97-98.
34. Mother admitted herself into an inpatient rehabilitation facility the day before the October 6, 2011, hearing, and was not present for the hearing. *See* N.T. October 6, 2011, p. 5.
35. Mother continued to lack compliance with visitation. There have been a number of cancelled visits and she did not stay for the full length of the visits she did attend. The length of the visit was one hour. October 6, 2011, p. 72.
36. K.Y.R. had issues and concerns as a result of missed visits and not seeing her parents. She was referred to a play therapist for these problems. N.T. October 6, 2011, p. 100.
37. During visits, the girls are happy to see Mother, they interact well with Mother, and Mother is appropriate and affectionate with them. However, Mother does not set limits for the children; she brings them candy and soda to the visits. Also, Mother plays on her cell phone instead of interacting with her children; she sits and watches them play. N.T. October 6, 2011, pp. 96, 101.

38. The children do not express any issues upon leaving the visits with Mother; the visits end very well and the children leave and go back to the foster home. The children do not cry at the end of the visits. N.T. October 6, 2011, p. 103.
39. At the time of the October 6, 2011, hearing, Mother was self-admitted to the hospital and not able to testify. The hearing was continued until October 7, 2011, in order to afford Mother the right to testify; however, Mother was not ready for discharge on that date and was still not able to testify. *See* N.T. October 7, 2011, pp. 2-3.
40. A third hearing date was provided to allow Mother to testify and she testified on November 17, 2011. N.T. November 17, 2011, pp. 3-20.
41. Mother could not remember the year D.Y.R. was born. She further testified that D.Y.R. was one year old at the time of the hearing when in fact D.Y.R. had turned two more than three months earlier. N.T. November 17, 2011, pp. 5-6.
42. Mother testified that she is still suffering from depression. In addition, she admitted that she had not done what she was supposed to do to address her mental health issues or attend SASSI. N.T. November 17, 2011, pp. 7, 9.
43. Mother's current residence is not appropriate for K.Y.R. and D.Y. R. to live in due to its size. N.T. November 17, 2011, p. 14.
44. Father has been incarcerated for the majority of the time the children have been in care. Father was initially incarcerated for two counts of retail theft and a simple assault charge. N.T. October 6, 2011, pp. 76-77.

45. While incarcerated in 2010, Father completed a relapse prevention class, a church program, and a parenting class. N.T. October 6, 2011, p. 120.
46. Father completed several inpatient drug and alcohol treatments including the Nuestra Clinica Residential on August 14, 2006; Keystone Short-Term Inpatient Detox on April 18, 2008; Eagleville on September 22, 2009 and Nuestra Clinica Residential on March 5, 2010. N.T. October 6, 2011, p. 78.
47. Following Father's last completion at inpatient drug and alcohol treatment, he was sent to a halfway house. However, he did not follow the rules of the halfway house and was sent back to Lehigh County Prison. N.T. October 6, 2011, pp. 78-79.
48. Father was released from incarceration on August 28, 2011. He has not begun to work on any of the recommended services he was required to comply with to regain custody of his daughters. He has not submitted urine screens; he did not go to a drug and alcohol intake for evaluation; his family is paying for the room he is residing in and he is currently unemployed. He needs to get insurance in order to seek mental health treatment. N.T. October 6, 2011, pp. 62-63, 76.
49. Father has two additional children ages 13 and 14, both of whom reside with his mother in Puerto Rico. N.T. October 6, 2011, p. 124.
50. After Father's release from prison, he was in the hospital from September 17, 2011 until September 22, 2011, due to depression and no longer having medication to regulate his mental health issues. N.T. October 6, 2011, pp. 112-113.

51. Father is currently prescribed Lithium, Invega and Remeron for bipolar disorder, depression and anxiety. N.T. October 6, 2011, pp. 114-115.
52. Father was approved for Medicaid and was waiting to receive his card before he could schedule counseling sessions at HOA. N.T. October 6, 2011, p114-116.
53. Father applied for Social Security Disability and an appointment was scheduled with the Social Security Office. N.T. October 6, 2011, p. 117.
54. Father is living with a friend, but looking for a place of his own. N.T. October 6, 2011, pp. 116-117.
55. Father had biweekly visits while incarcerated. He has always been consistent with visitation and the visits go well. Since his release he attended one visit and cancelled one visit due to medical hospitalization. October 6, 2011, pp. 72, 87.
56. Anne Searock, the Court Appointed Special Advocate (CASA), observed visits between Father and the children. At the visit that occurred after Father's release from prison, K.Y.R. greeted Father, but D.Y.R refused to. K.Y.R. spent the visit between parenting D.Y.R. and engaging with Father. D.Y.R. played by herself or engaged with the caseworkers. When frightened on an elevator, D.Y.R. asked the CASA, not Father, to hold her. P-2, Master's Recommendation – Permanency Review Order dated September 15, 2011, filed October 4, 2011, Exhibit "1"
CASA Report to the Court.
57. The last permanency review hearing that was held in this matter was September 15, 2011. Mother had no compliance with the permanency plan and Father had minimal compliance with the permanency plan. Mother was ordered to comply

with the following recommendations: cooperate with mental health treatment and follow through with any recommendations; complete a drug and alcohol evaluation and follow through with any additional recommendations; obtain and maintain stable, legal income and housing; submit random urine screens at SASSI; contact and cooperate with LCOCYS. Father was ordered to comply with the following recommendations: submit to urine screens at SASSI; cooperate with mental health treatment and follow through with any recommendations; cooperate with drug and alcohol treatment and follow through with recommendations; obtain and maintain a legal and verifiable source of income and housing. P-2 Master's Recommendation – Permanency Review dated September 15, 2011, filed on October 4, 2011.

58. K.Y.R. has been in foster care for 53 out of 73 months of her life. Mother provided K.Y.R. care for 19 months and Father was involved with K.Y.R.'s care for 9 of those months. October 6, 2011, p. 73.
59. K.Y.R. is in first grade and is doing well in school. She receives extra help in math and reading. K.Y.R. has asthma, but no medical issues or concerns that have been problematic. K.Y.R. receives play therapy to help her through the transition of being removed from her parents and the length of time she has been out of their care. N.T. October 6, 2011, pp. 68-69.
60. D.Y.R. has been in care for 15 out of 26 months; Mother provided D.Y.R.'s care for 11 months and Father provided care for D.Y.R. for one month. October 6, 2011, pp. 73-74.

61. D.Y.R. is developmentally on target and has no medical issues or concerns. N.T. October 6, 2011, pp. 68-69.
62. K.Y.R. and D.Y.R. have been in the same foster home together since June of 2010. K.Y.R. has been in this home for over 19 months because of two separate placements; D.Y.R. has resided in this home for over 14 months. It is a single-mother home and the foster mother would be willing to adopt both girls. There are two older children that live in the home, ages 9 and 13; and all four children interact very well together, like regular siblings. N.T. October 6, 2011, pp. 69-70.
63. K.Y.R. and D.Y.R. call their foster mother "Mommy Tara". N.T. October 6, 2011, p. 104.
64. Heather Hudson has worked at Lehigh County Office of Children and Youth Services for over eight years. She became the caseworker assigned to this family on August 17, 2010. She testified that this case is five and a half years old and the same issues that brought K.Y.R. originally into care are still the issues Mother is dealing with today. Ms. Hudson does not see Mother's progress changing in the future. October 6, 2011, pp. 75-76.
65. Ms. Hudson testified that the court noted in its September 15, 2011 Order that Father has a stronger bond with K.Y.R. than with D.Y.R. N.T. October 6, 2011, p. 87.
66. Dalton Rumfield is a licensed professional counselor in Pennsylvania with a private counseling practice called Alliance Counseling and Wellness Coaching.

- Mr. Rumfield has provided counseling services to K.Y.R. since January of 2011.
N.T. October 6, 2011, p. 10.
67. During play therapy K.Y.R. has recurring themes involving family and jail, including the police coming to the door, the children visiting parents in jail, and trying to help the parents escape from jail. N.T. October 6, 2011, pp. 15.
68. K.Y.R. drew a picture where a child was stuck in glue and she wanted her mommy to rescue her from the glue. N.T. October 6, 2011, pp. 15-16.
69. Heather Reed testified as an expert in child development. She opined that a child describing a situation about being stuck in glue and having their mother rescue them does not describe a secure attachment. Similarly, a child describing a situation fantasizing about a parent being taken away in handcuffs does not describe a secure attachment. The scenarios describe untrustworthiness; the child wants to be rescued, but she is there alone. N.T. June 6, 2012¹, pp. 42-43.
70. The turmoil K.Y.R. portrays during the play therapy stems from her situation with her parents. She struggles because she does not know what direction her life is going. October 6, 2011, pp. 27-28.
71. K.Y.R. was very upset when a visit was not confirmed and has expressed to Mr. Rumfield that she feels frustrated, angry and confused when a visit with a parent is missed. N.T. October 6, 2011, pp. 18-21 26-27.
72. K.Y.R. has expressed confusion, disappointment, and frustration to Mr. Rumfield about not being with either of her parents. N.T. October 6, 2011, pp. 26-27.

¹ A fourth hearing was held on June 6, 2012, after a review of the record raised questions relating to the bond between the children and their parents.

73. Play therapy can be used to address the loss of parents to a child. N.T. October 6, 2011, pp. 20-21.

74. Ms. Reed testified that the general understanding in child development is that in cases where there are repeated interruptions in the relationship between parent and child, the bond weakens. N.T. June 6, 2012, p. 43.

CONCLUSIONS OF LAW

1. Petitioner established by clear and convincing evidence that Mother's conduct for a period of at least six months preceding the filing of the Petition to terminate her rights evidenced a settled purpose to relinquish her parental claim to K.Y.R. and D.Y.R. and that she refused to and failed to perform parental duties.
2. Petitioner established by clear and convincing evidence that Mother's repeated and continued incapacity and refusal has caused K.Y.R. and D.Y.R to be without essential parental care, control or subsistence necessary for their physical and mental well-being and the conditions and causes of the incapacity and refusal cannot or will not be remedied by the parent.
3. Petitioner established by clear and convincing evidence that K.Y.R and D.Y.R have been removed from the care of Mother by the court for a period of at least six months, the conditions which led to the removal of the children continue to exist, Mother 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 of the children within a

reasonable period of time, and termination of the parental rights would best serve the needs and welfare of the children.

4. Petitioner established by clear and convincing evidence that K.Y.R. has been removed from the care of Mother by the court, more than twelve months have elapsed from the date of removal, the conditions which led to the removal of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.
5. Petitioner established by clear and convincing evidence that the termination of Mother's parental rights to K.Y.R. and D.Y.R. best meets the needs and welfare of the children, and best provides for their developmental, physical and emotional needs.
6. Petitioner established by clear and convincing evidence that the termination of Mother's parental rights to K.Y.R. and D.Y.R. is appropriate in this case.
7. Petitioner established by clear and convincing evidence that Father's conduct for a period of at least six months preceding the filing of the petition to terminate his rights evidenced a settled purpose to relinquish his parental claim to K.Y.R. and D.Y.R. and that he refused to and failed to perform parental duties.
8. Petitioner established by clear and convincing evidence that Father's repeated and continued incapacity and refusal has caused K.Y.R. and D.Y.R to be without essential parental care, control or subsistence necessary for their physical and mental well-being and the conditions and causes of the incapacity and refusal cannot or will not be remedied by the parent.

9. Petitioner established by clear and convincing evidence that the termination of Father's parental rights to K.Y.R. and D.Y.R. best meets the needs and welfare of the children, and best provides for their developmental, physical and emotional needs.
10. Petitioner established by clear and convincing evidence that the termination of Father's parental rights to K.Y.R. and D.Y.R. is appropriate in this case.

DISCUSSION

On February 16, 2011, LCOCYS filed petitions to terminate the parental rights of Mother and Father to K.Y.R. and D.Y.R. The grounds for involuntary termination are set forth in 23 Pa. C.S.A. § 2511. Petitioner only needs to establish one ground for termination. LCOCYS petitioned to terminate Mother's parental rights on the grounds of 23 Pa. C.S.A. § 2511(a)(1), (2), (5), and (8) and § 2511(b). LCOCYS petitioned to terminate Father's parental rights on the grounds of 23 Pa. C.S.A. § 2511(a)(1) and (2), and § 2511(b).

The statute provides, in pertinent part, as follows:

§ 2511. Grounds for involuntary termination

- (a) General rule.- The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:
 - (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition 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 months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

...

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

(b) Other considerations. – The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child... 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 petition.

In re: Involuntarily Termination of Parental Rights to K.Y.R. and D.Y.R.; A2011-0008 and A2011-0009

Under section 2511, the trial court must engage in a bifurcated process. The initial focus is on the conduct of the parent. *See, e.g., In re A.L.D.*, 797 A.2d 326, 339 (Pa. Super. 2002). The party seeking termination must prove by clear and convincing evidence that the parent's conduct satisfies at least one of the nine statutory grounds delineated in section 2511(a). If the trial court determines that the parent's conduct warrants termination under section 2511(a), then it must engage in an analysis of the best interests of the child analysis under section 2511(b), taking into primary consideration the developmental, physical, and emotional needs of the child. *R.J.S.*, 901 A.2d [502] at 508.

In re I.J., 972 A.2d 5 (2009).

All children are entitled to certain irreducible minimum requirements from their parents, including adequate housing, clothing, food, love, and supervision. *In Re: J.W.*, 578 A.2d 952 (Pa. Super. 1990). In addition, a parent must exhibit reasonable firmness in attempting to overcome any barriers or obstructive behavior of others and affirmatively demonstrate love, protection and concern for the child. *In Re: C.M.S.*, 832 A.2d 464 (Pa. Super. 2003).

The Court must examine the circumstances of the case and also consider all explanations offered to determine if the evidence, in light of the totality of the circumstances, clearly warrants involuntary termination. *Matter of Adoption of Charles E.D.M., II*, 550 Pa. 595, 601, 708 A.2d 88, 91 (Pa. 1998). The petitioner has the burden of producing evidence that is so clear, direct, weighty and convincing, so as to enable the court to come to a clear conviction, without hesitation of the truth of the precise facts at issue. *In re: Child M*, 681 A.2d 793 (Pa. Super. 1996).

Mother

A court may terminate parental rights under section 2511(a)(1) when the parent demonstrates a settled purpose to relinquish parental claim to a child or fails to perform parental duties for at least six months prior to the filing of the termination petition. *In re I.J.*, supra. “Although the six-month period immediately preceding the filing of the petition is most critical to the analysis, the court must consider the whole history of the case and not mechanically apply the statutory six-month statutory provision.” *Id.* citing *In re K.Z.S.*, 946 A.2d 753, 758 (Pa. Super. 2008).

Six months prior to the filing of the petition to terminate Mother’s parental rights, Mother again relapsed into her drug addiction. During that time she failed to perform the parental duties owed to her daughters. Per the Permanency Review Order dated October 22, 2010, which covers the period of time beginning August 17, 2010, Mother had no compliance with the court-ordered services and had made no progress toward alleviating the circumstances which necessitated the original placement. She did not appear at the October 7, 2010 review hearing. Mother was voluntarily cutting short the duration of the visitation she shared with her daughters and visitation was reduced in frequency; she continues to lack compliance with the shortened visitation schedule by cancelling visits or not remaining for the entire length of the one-hour visit. N.T. October 6, 2011, pp. 71-72.

The children were removed from Mother’s care in June of 2010 because of Mother’s mental health problems. Mother has not complied with mental health treatment

which was ordered as early as August 9, 2010. P-2 Order of Adjudication and Disposition – Child Dependent dated July 15, 2010, signed and filed August 9, 2010.

Mother relapsed into drug addiction in August of 2010. Mother did not treat her drug addiction in any manner from the time she relapsed in August of 2010 until she was admitted into a drug and alcohol rehabilitation facility on March 2, 2011, which was after the petition to terminate her rights was filed. She was readmitted to a drug rehabilitation facility again in August 2011. N.T. October 6, 2011, pp. 63-64, 97-98.

During the six months immediately preceding the Petition for Involuntary termination, Mother did not take any steps to address her drug addiction even though failing to do so would prevent her from parenting her children. Her decision to use illegal substances instead of parent her children evidenced a settled purpose of relinquishing parental claim. In addition, as a result of Mother's mental health issues and drug addiction, she has failed to perform any parental duties. She has not provided any form of physical or emotional care for her daughters; those duties have been left to others. This failure was evident for the six months prior to the filing of the Petition, continued after the Petition was filed, and has been a problem throughout the history of this case. Petitioner has established by clear and convincing evidence that Mother's conduct satisfies 23 Pa.C.S.A. § 2511(a)(1).

Similarly, Mother's mental health issues and drug addiction have led to her repeated and continued incapacity and has caused the children to be without Mother's essential parental care, control or subsistence necessary for their physical and mental well-being pursuant to 23 Pa.C.S.A. § 2511(a)(2). Again, the children have been

removed from Mother's physical care and she has failed to support or care for the girls physically or emotionally. Her only contribution has been inconsistent visitation since June of 2010. Mother was ordered to comply with mental health treatment in August of 2010 and has failed to do so. Mother has attempted to address her addiction problem which dates back to June 18, 2006. She has received services and has been to rehabilitation facilities in an attempt to address her addiction, however, she has not been able to maintain sobriety in the past and did not demonstrate sobriety to this court, and, instead, opted to forego the submission of urine screens.

Mother's mental health issues and drug addiction problems have made her incapable of parenting; those causes cannot or will not be remedied by Mother. Accordingly, Petitioner has established by clear and convincing evidence that Mother's conduct satisfies 23 Pa.C.S.A. § 2511(a)(2).

The statutory grounds set forth at 23 Pa.C.S.A. § 2511(a)(5) and (8) require that the children have been removed from the parent's care for a period of six and twelve months respectively. As of October 6, 2011, K.Y.R. has been in foster care for 53 out of 73 months of her life; Mother provided care for K.Y.R. for 19 months. N.T. October 6, 2011, p. 73. K.Y.R. was removed from her Mother's care for the first time by court order from June 18, 2006 until September 2, 2009. In addition, K.Y.R. was removed by court order for the second time beginning June 11, 2010, and has not returned to Mother since that time. From the date the petition to terminate Mother's parental rights was filed, K.Y.R. has been removed from Mother's care for a period of 3 years and 10 months, well over the statutory requirements of 6 and 12 months.

D.Y.R. has been in care for 15 out her 26 months of life as of October 6, 2011; Mother provided for her physical care for 11 months. D.Y.R. was removed from Mother's care in June of 2010, and has remained in foster care since that time. N.T. October 6, 2011, pp. 69-70, 73-74. However, from the date the petition to terminate Mother's parental rights was filed, D.Y.R. was removed from Mother's care a total of 8 months. Accordingly, Petitioner has satisfied the statutory grounds to terminate Mother's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(5), but not 23 Pa.C.S.A. § 2511(a)(8) for D.Y.R.

The grounds set forth in 23 Pa.C.S.A. §2511(a)(5) and (8) also require that the conditions which led to the removal of the children continue to exist. As previously discussed, Mother's mental health problems and drug addiction caused the children to be removed and those conditions continue to exist and Mother cannot or will not remedy those conditions within a reasonable period of time. Mother has not yet addressed her mental health needs. Mother testified on November 17, 2011, that she is still depressed and she did not do what she was required to do to resolve her mental health issues or prove sobriety. N.T. November 17, 2011, pp. 7, 9. She has begun the long process related to addiction recovery, but has not been able to demonstrate long-term sobriety, in short because she did not seek treatment for such an extended period of time. We find guidance in the reasoning of the Superior Court, which provided:

If we were to permit mother further opportunity to cultivate an environment where she can care for [the child], we would be subjecting a child, who has been waiting for more than two years for permanency, to a state of proverbial limbo in anticipation of a scenario that is speculative at best. While it appears that mother has managed to remain drug-free in the

confines of incarceration, whether she can maintain the status among the external pressures of the outside world remains to be proven.

In Re: C.L.G., 956 A.2d 999, 1006 (Pa. Super. 2008). Mother's ability in this case to remain drug-free is equally uncertain. K.Y.R.'s life was already put on hold once in order to give Mother the opportunity to overcome her addiction problems. Mother was able to get back on track and regain custody of K.Y.R.; but less than a year later, Mother once again lost custody of K.Y.R., this time along with D.Y.R., due to mental health and addiction problems. The period of time necessary for Mother to prove that she has overcome her addiction problem and has her mental health issues under control is beyond reasonable for the children in this case to have to wait. We further find that the termination of Mother's parental rights best serves the needs and welfare of the children, which is discussed more fully below, and, accordingly, Petitioner has established that Mother's conduct satisfies the grounds for termination set forth pursuant to 23 Pa.C.S.A. § 2511(a)(5) and (8) as to K.Y.R. and 23 Pa.C.S.A. § 2511(a)(5) as to D.Y.R.

Finding that LCOCYS has established statutory grounds for terminating Mother's parental rights, we turn now to the consideration of the needs and welfare of the children. 23 Pa.C.S.A. § 2511(b). In addressing the needs and welfare of the children, it is necessary to consider the emotional bond between the parent and each child. *In Re: E.M.*, 620 A.2d 481 (Pa. 1993). "A court, in considering what situation would best serve the child's needs and welfare, must examine the status of the natural parental bond to consider whether terminating the natural parents' rights would destroy something in existence that is necessary and beneficial." *In Re: P.A.B.*, 570 A.2d 522 (Pa. Super.

1990). Further, parents cannot solely rely on their natural ties to their child. *In Re: Stickler*, 356 Pa. Super. 56, 60, 514 A.2d 140, 142 (1986).

In conducting a 23 Pa.C.S.A. § 2511(b) analysis, the Pennsylvania Superior Court guides us as follows:

In *In re C.M.S.*, 884 A.2d 1284, 1287 (Pa. Super. 2005), this Court stated, “Intangibles such as love, comfort, security, and stability are involved in the inquiry into needs and welfare of the child.” In addition, we instructed that the orphans’ court must also discern the nature and status of the parent-child bond, with utmost attention to the effect on the child of permanently severing that bond. *Id.* However, the extent of the bond-effect analysis necessarily depends on the circumstances of the particular case. *In re K.Z.S.*, 946 A.2d 753, 763 (Pa. Super. 2008).

While a parent’s emotional bond with his or her child is a major aspect of the subsection 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 K.K.R.-S.*, 958 A.2d 529, 533-536 (Pa. Super. 2008). The mere existence of an emotional bond does not preclude the termination of parental rights. *See In re T.D.*, 949 A.2d 910 (Pa. Super. 2008)(trial court’s decision to terminate parents’ parental rights was affirmed where court balanced strong emotional bond against parents’ inability to serve needs of child). Rather, the orphans’ court must examine the status of the bond to determine whether its termination “would destroy an existing, necessary and beneficial relationship.” *In re Adoption of T.B.B.*, 835 A.2d 387, 397 (Pa. Super. 2003). As we explained in *In re A.S.*, 11 A.3d 473, 483 (Pa. Super. 2010),

[I]n addition to a bond examination, the trial court an equally emphasize the safety needs of the child, and should also consider the intangibles such as love, comfort, security, and stability the child might have with the foster parent. Additionally, this Court stated that the trial court should consider the importance of continuity of relationships and where any existing parent-child bond can be severed without detrimental effects on the child.

In re. N.A.M., 33 A.3d 95, 103 (Pa. Super. 2011).

K.Y.R. was born on August 24, 2005. K.Y.R. was removed from Mother’s care on June 18, 2006, when she was less than one year old and remained out of her care for

over three years until she was returned home to Mother's care on September 2, 2009.

N.T. October 6, 2011, pp. 42-44, 55. Mother had custody of K.Y.R. for nine more months until K.Y.R. was again removed from Mother's care on June 11, 2010. As of the date of the October 6, 2011, hearing, Mother had physical custody of K.Y.R. only 19 months out of her 73 months of life. N.T. October 6, 2011, p. 73.

D.Y.R. was born on July 31, 2009. Mother cared for D.Y.R. from her birth until June 11, 2010; D.Y.R. was removed from Mother's care when she was less than one year old. N.T. October 6, 2011, p. 59. As of the October 6, 2011, hearing, D.Y.R. was in Mother's physical custody only 11 months out of her 26 months of life. N.T. October 6, 2011, pp. 73-74.

Both girls have been removed from Mother's care for more than half of their lives. Where there are repeated interruptions in the relationship between parent and child, the bond between them weakens. N.T. June 6, 2012, p. 43. In exploring the bond between the children and Mother, the children appear to long for a connection, and hunger for the protection and reliability of a parent, but this longing has been unfulfilled by Mother.

In addition to not having physical custody of the children, Mother has not been compliant with the visitation she was awarded. From October 20, 2010 through March 9, 2011, Mother cancelled three visits, including one visit that was added to the schedule to make up for two consecutive visits that were cancelled by LCOCYS due to weather conditions. Mother was twenty minutes late to one of the visits she did attend. P-1 and P-2 Permanency Review Order dated March 30, 2011. Out of the five-month period,

only five visits took place.² K.Y.R. and D.Y.R. are happy to see Mother, but are not sad or upset when the visit is over. Although Mother is appropriate and affectionate with the girls, she does not set limits for the children and does not interact with them during visits, opting instead to play on her cell phone or simply watch them play. N.T. October 6, 2011, pp. 96, 101-102. Her visitation with the girls has been sporadic, causing K.Y.R. turmoil in her life.

Bonds are created by the faithful reliability of a parent in providing the daily needs of life, such as clothing, shelter, and food. Mother has failed completely in providing the substance of life which forms the basis of the bond. Furthermore, Mother has been inconsistent in attending visits and inattentive when the visits do occur. A compelling bond cannot develop in such circumstances. The lack of contact has not been sufficient to sustain the type of bond that would detrimentally affect the children if broken.

K.Y.R. was referred to a play therapist for the problems she experiences as a result of Mother's missed visits. N.T. October 6, 2011, p. 100. Her therapist testified that K.Y.R. feels frustrated, angry and confused when a visit with a parent is missed. He further testified that K.Y.R. has recurring themes during play therapy involving police showing up at the home, visiting her parents in jail and trying to help parents escape from jail. N.T. October 6, 2011, pp. 15-21. K.Y.R. also drew a picture of a child stuck in glue in hopes that her mommy would rescue her. N.T. October 6, 2011, pp. 15-16. These depictions do not describe a secure attachment, but instead depict a relationship that lacks

² K.Y.R. did not attend the March 9, 2011, visit because she was attending inpatient treatment.

trust. N.T. June 6, 2012, pp. 42-43. The mother to whom the children seek to attach themselves is a mythical and largely unattainable fantasy. The reality is, the mother they do have is not reliably present, and is not faithful, and there is no real bond that has been nurtured.

At the time of the October 6, 2011, hearing, K.Y.R. was in first grade and was doing well in school. She had not had any medical problems. D.Y.R. is developmentally on target and has no medical issues or concerns. N.T. October 6, 2011, pp. 68-69.

As of October 6, 2011, K.Y.R. has resided in the same foster home for a total of nineteen months. D.Y.R. has resided in the same foster home with her sister for over fourteen months, since June of 2010. The foster family is willing to adopt both K.Y.R. and D.Y.R. N.T. October 6, 2011, pp. 69-74. The foster home includes a single mother and two older children. K.Y.R. and D.Y.R. refer to their foster mother as “Mommy Tara” and interact with the older children like siblings. N.T. October 6, 2011, pp. 69-70, 104.

We find it is within the children’s best interest to terminate the parental rights of Mother. The children have been receiving all of their physical, emotional and academic support from their foster family. Their foster family has met all of their daily needs; it has been their home since June of 2010, and they are doing well there.

Mother’s mental health issues and drug addiction problems have prevented Mother from having a consistent, reliable relationship with her children. Since June of 2010, Mother has not taken the steps required to move toward reunification with her children. The girls need and deserve a permanent family that is consistently providing

for their needs, supporting and loving them. To sever the relationship with Mother will not sever a bond of attachment, but will sever a source of frustration, and allow a true bond with adoptive parents based on constancy and reliability. It is in both K.Y.R and D.Y.R.'s best interest to terminate Mother's parental rights.

FATHER

On February 16, 2011, OCYS filed a petition to terminate Father's parental rights to K.Y.R. and D.Y.R. pursuant to 23 Pa.C.S.A. § 2511(a)(1) and (2) and 2511(b).

In examining the grounds for termination pursuant to 23 Pa.C.S.A. § 2511(a)(1), in a situation with an incarcerated parent, the Pennsylvania Supreme Court has stated:

[A] parent's absence and/or failure to support due to incarceration is not conclusive on the issue of abandonment. Nevertheless, we are not willing to completely toll a parent's responsibilities during his or her incarceration. Rather, we must inquire whether the parent has utilized those resources at his or her command while in prison in continuing a close relationship with the child. Where the parent does not exercise reasonable firmness in declining to yield to obstacles, his other rights may be forfeited.

In re: Adoption of McCray, 331 A.2d 652, 655 (Pa. 1975). In this case, Father has maintained consistent visitation with the children during his incarceration. While incarcerated, Father completed a relapse prevention class, a church program, and a parenting class. N.T. October 6, 2011, p. 120. Father also completed four inpatient drug and alcohol treatments. N.T. October 6, 2011, p. 78.

In reviewing the Father's whereabouts throughout this case, we found the following: Father was incarcerated at the June 18, 2006 hearing, December 21, 2006 hearing and June 21, 2007 hearing. Father was not incarcerated at the time of the January 10, 2008, hearing, however, he tested positive for marijuana on January 2, 2008, and was

noncompliant after that date, and he failed to attend the April 17, 2008 hearing. Father was then incarcerated again at the time of the October 2, 2008 hearing. He was not incarcerated at the time of the January 15, 2009, hearing. Father was incarcerated on July 13, 2009, for violating probation. Father was again incarcerated during the hearings held on July 23, 2009, August 27, 2009, and March 11, 2010. On March 5, 2010, Father went to Nuestra Clinica and was discharged there on May 11, 2010, to Alternative Counseling Associates, a halfway house in Pottstown. He was subsequently discharged from there on May 25, 2010, for failing to follow the facility's rules. He turned himself in to Lehigh County Prison the day he was discharged. He was incarcerated during the hearings on June 11, 2010, July 15, 2010, August 16, 2010, and October 7, 2010. Father entered work release on March 8, 2011, but returned to the main facility on March 23, 2011, due to a violation. He entered work release again on July 12, 2011, but returned to the main facility again on August 20, 2011, because of another violation. He served his maximum sentence on August 28, 2011, and was released.

Father's history demonstrates he did not exercise reasonable firmness in declining to yield to obstacles. On at least four separate occasions Father was presented with an opportunity to live outside of the main prison facility and begin to demonstrate his willingness and ability to parent his daughters. He wasted those opportunities by failing to follow the rules of probation or the halfway house or work release and was confined to the main prison where he was precluded from taking any steps toward parenting his children. Father's actions for a period exceeding six months immediately preceding the

filing of the petition evidenced a settled purpose of relinquishing parental claim to his children.

The statutory grounds for termination pursuant to 23 Pa.C.S.A. § 2511(a)(2) provides for termination of parental rights where it is demonstrated by clear and convincing evidence that “[t]he repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.”

The Pennsylvania Supreme Court has recently held that:

[I]ncarceration, while not a litmus test for termination, can be determinative of the question of whether a parent is incapable of providing “essential parental care, control or subsistence” and the length of the remaining confinement can be considered as highly relevant to whether “the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent,” sufficient to provide grounds for termination pursuant to 23 Pa.C.S. § 2511(a)(2).

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

At the October 6, 2011, hearing, K.Y.R. was 6 years old. Father lived with her 9 months out of those 6 years. As for D.Y.R., at the time of the October 6, 2011, hearing, she was 2 years old and Father had lived with her for 1 month out of the two years. Father’s incarceration caused a continued incapacity on his part that caused K.Y.R. and D.Y.R. to be without any parental care, control or subsistence necessary for their physical and mental well-being. In addition, Father’s incarceration prohibited Father from making any progress in the areas outlined by LCOCYS to begin the reunification process. Father has drug problems and mental health issues that have not been resolved because of his

lengthy incarceration. After Father was released from prison he was hospitalized from September 17, 2011 until September 22, 2011 because of his depression and failure to obtain medication. Father is prescribed Lithium, Invega and Remeron for bipolar disorder, depression and anxiety. N.T. October 6, 2011, pp. 112-115.

Father has had opportunities to be released from prison, however, his refusal to follow the rules of probation, the halfway house and the work release facility establishes that Father's incapacity and refusal to provide essential parental care will not be remedied by him. In addition, his continued incarceration prevented Father from having his mental health issues resolved prior to our October 6, 2011 hearing. At the time of the hearing, Father was not in a position to provide care for his children as he did not have a legal source of income, appropriate housing for the children, and he needed to establish that he resolved his drug problem and mental health issues; there is no reasonable period of time in the future that Father would reach such status, especially given the fact his children have been in placement since June of 2010.

Finally, we must consider the developmental, physical and emotional needs and welfare of the children in determining whether to terminate Father's parental rights. 23 Pa.C.S.A. § 2511(b). We reiterate how little time the children have lived with Father: K.Y.R. lived with Father 9 months out of 6 years and D.Y.R. lived with Father 1 month out of 2 years. Although the children have had consistent visitation with Father, the visits have been biweekly and in the prison setting.

When the visits moved to the Government Center after Father's release from incarceration, the CASA observed that Father only engaged with the children when they

came to him. K.Y.R. greeted Father and spent time between “parenting [D.Y.R.] to engaging with [Father].” D.Y.R. refused to greet Father, and played by herself or engaged with caseworkers, not Father. When frightened on an elevator, D.Y.R. asked the CASA to hold her, not Father who was also on the elevator. P-2, Master’s Recommendation – Permanency Review Order dated September 15, 2011, filed October 4, 2011, Exhibit “1” CASA Report to the Court.

There was testimony from Heather Hudson, the LCOCYS caseworker, to confirm that the Juvenile Master Jacquelyn C. Paradis, Esquire, made a finding of fact on September 26, 2011, that there is a much stronger bond between K.Y.R. and Father than D.Y. R. and Father. N.T. October 6, 2011, p. 87; *see also* P-2 Master’s Recommendation – Permanency Review dated September 15, 2011, filed October 4, 2011. We do not give great weight to that finding and do not read it in the same manner as Father’s counsel argues. The evidence establishes that the bond between D.Y.R and Father is non-existent or minimal; therefore, to state that the bond between K.Y.R. and Father is much stronger does not necessarily suggest that it is the type of bond this court would hope to find between Father and daughter, but only that it is more formed compared to a bond that does not exist. We would expect as much given the difference in the length of time each daughter has lived with Father and for the number of additional years K.Y.R. has known and visited Father.

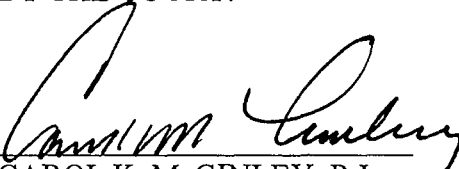
We do not find that the termination of Father’s parental rights would destroy an existing, necessary and beneficial relationship between him and his children. K.Y.R. and D.Y.R. have had all of their needs met by a foster mother who is willing to adopt them.

*In re: Involuntarily Termination of Parental Rights to K.Y.R. and D.Y.R.;
A2011-0008 and A2011-0009*

It is in their best interest to have a stable, permanent environment where they can grow and thrive. Father's parental rights are terminated in order to accomplish that goal.

DATE: *September 12, 2012*

BY THE COURT:


CAROL K. MCGINLEY, P.J.