

J-A23045-13

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: L.B.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: L.B., a Minor

No. 901 EDA 2013

Appeal from the Order entered February 25, 2013,
in the Court of Common Pleas of Philadelphia County,
Family Court at No(s): CP-51-AP-0000425-2012,
CP-51-DP-0000013-2011, FID-51-FN-379078-2009.

IN RE: L.B.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: L.B., a Minor

No. 902 EDA 2013

Appeal from the Order entered February 25, 2013,
in the Court of Common Pleas of Philadelphia County,
Family Court at No(s): CP-51-AP-0000424-2012,
CP-51-DP-0000012-2011, FID-51-FN-379078-2009

IN RE: T.B.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: T.B., a Minor

No. 903 EDA 2013

Appeal from the Order entered February 25, 2013,
in the Court of Common Pleas of Philadelphia County,
Family Court at No(s): CP-51-AP-0000426-2012,
CP-51-DP-0000014-2011, FID-51-FN-379078-2009.

IN RE: T.B.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: T.B., a Minor

No. 904 EDA 2013

Appeal from the Order entered February 25, 2013,
in the Court of Common Pleas of Philadelphia County,
Family Court at No(s): CP-51-AP-0000427-2012,
CP-51-DP-0000015-2011, FID-51-FN-379078-2009.

BEFORE: BENDER, P.J., DONOHUE and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED DECEMBER 19, 2013

L.B.-1, (a female born in June of 2007); L.B.-2, (a male born in July of 2008); T.B.-1, (a male who is L.B.-2's twin); and T.B.-2 (a female born in September of 2010) (collectively, "the Children"), appeal from the Orders denying, without prejudice, the Petitions filed by the Philadelphia Department of Human Services ("DHS") seeking to involuntarily terminate the parental rights of the Children's parents, T.H. ("Mother), and L.B. ("Father"), to the 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),

and change the permanency goal for the Children to adoption, pursuant to section 6351 of the Juvenile Act, 42 Pa.C.S.A. § 6351.¹ We affirm.

The Children were adjudicated dependent on January 13, 2011, and were committed to the custody of DHS on that date. N.T., 12/3/12, at 7-8. On August 24, 2012, DHS filed Petitions seeking to involuntarily terminate Mother's and Father's parental rights to the Children, and to change their permanency goal to adoption. The trial court held hearings on the termination/goal change Petitions on December 3, 2012, February 12, 2013 and February 25, 2013. DHS first presented the testimony of Tanisha Richardson ("Richardson"), who was the DHS caseworker assigned to the family in April of 2010, when the family was having housing issues. *Id.* at 15-16. Richardson testified that the Children had been placed in foster care through a provider agency, Devereaux, on January 4, 2011, and remained in foster care. N.T., 2/12/13, at 6.

DHS created a Family Service Plan ("FSP"), dated February 3, 2011, for the family. *Id.* at 7-9; DHS Ex. 1. The FSP objectives for Mother were 1) to participate in parenting education; 2) to stabilize her mental health; 3) to stabilize her physical health; 4) to maintain contact and visitation with the Children; 5) to assure the safety of the Children; and 6) to have a better relationship with the Children through therapy. *Id.* at 15-16. Richardson

¹ DHS did not file a brief in the instant appeals.

referred Mother to providers to assist Mother in achieving her objectives. **Id.** at 16-17.

Father's FSP goals were the same as Mother's goals, with an additional goal of maintaining stabilization with drug and alcohol concerns because, at the hearing on January 13, 2011, he admitted to using marijuana. **Id.** at 17-18. Father also had an added goal of acquiring and/or maintaining appropriate housing for the Children. **Id.** at 18. The permanency goal for the family was reunification. **Id.** at 19.

After several changes to the FSP, on May 24, 2012, DHS prepared a fifth FSP. **Id.** at 28, 40-41; DHS Ex. 6. The stated permanency goal for the Children was adoption. N.T., 2/12/13, at 42. Richardson stated that Mother's FSP goals were to stabilize her mental and physical health, and to be compliant with visitation. **Id.** Richardson explained that Mother had attended follow-ups on her neurological issue. **Id.**

Richardson testified that Father's goals were to stabilize his mental health, to complete parenting education, to address housing issues, and to be compliant with visitation. **Id.** Richardson stated Father was compliant with his housing and visitation goals, but was not compliant with his mental health and parenting goals. **Id.** at 42-43.

Richardson testified that the parents' visitation has always been supervised. **Id.** at 43-44. Richardson stated that Mother's visits were not

changed to unsupervised, because Mother required prompting in caring for the Children. **Id.** at 44.

On cross-examination by Mother's counsel, Richardson testified that, for the period between May of 2012 and the filing of the petition, Mother was fully compliant by visiting the Children, but she needed help in interacting with the Children from Father or a caseworker. **Id.** at 63. Richardson also testified that Mother was compliant with her parenting class goal. **Id.** at 65. Richardson was not certain whether Mother was compliant with her goal to stabilize her physical health, because Mother had a neurological exam, but Richardson was not aware of any follow-up. **Id.** at 65-66. Richardson testified that Mother had gone to a mental health therapist, but the therapist at Northeast Mental Health Center told Richardson that Mother did not follow the recommendations, and Mother missed more sessions than she attended. **Id.** at 67-68. Richardson testified that Mother was non-compliant with her goal to stabilize mental health because of her failure to attend individual therapy and family therapy on a weekly basis. **Id.**

Richardson stated that Mother had made progress in her goal of learning age appropriate behavior for the Children, and might be compliant with that objective. **Id.** at 68-70. Richardson testified that Mother was not compliant with her mental health and parenting objectives. **Id.** at 71. Richardson indicated that she specified to Mother that Mother needed to complete additional parenting courses at Family School, which are more

intense than the parenting courses at the Achieving Reunification Center (“ARC”), but Mother refused. **Id.** at 71. Richardson conceded that Mother loves the Children, and that a bond exists between her and the Children. **Id.** at 70-72.

On cross-examination by Father’s counsel, Richardson conceded that, in the Dependency Review Order (“DRO”) dated December 15, 2012, the trial court no longer recommended that Father have drug and alcohol treatment, and that, in the May 24, 2012 FSP, there was no drug and alcohol treatment objective for him. **Id.** at 73-78. Richardson stated that Father completed a parenting class in February 2012, satisfying his FSP parenting class objective. **Id.** at 76. After February of 2012, Richardson did not refer Father to additional parenting classes. **Id.** at 78-80. Richardson conceded that, at her last visit to Father’s home, his housing was appropriate, but she had not seen the home since the previous court date. **Id.** at 80-83.

Richardson stated that Father had been in the same mental health treatment program since 2006. **Id.** at 83-84. In mid-January 2013, Richardson sent medical records to Father’s mental health therapist, via facsimile, seeking documentation, but had not yet received it at the time of the hearing. **Id.** at 84-85. Richardson last spoke with Father’s mental health therapist on December 3, 2012. **Id.** at 84, 86-87. Richardson did not attend any visitations with the Children and Father. **Id.** at 87-90.

Richardson conceded that she was unable to determine whether Father was compliant with his Behavioral Health Services, housing or visitation objectives, but she stated that he was compliant with his parenting class objective. **Id.** at 88-89.

Next, DHS presented the testimony of Trina Anderson ("Anderson"), a social worker who is the clinical case manager from the provider agency, Devereaux, assigned to the case since January of 2011. **Id.** at 99. She maintains a visitation log for the Children, their medical and dental records, and their school information. **Id.** at 100. Anderson testified that L.B.-1 is in special education in kindergarten, through the School District of Philadelphia, and receives speech therapy and life skills instruction there. **Id.** at 100. L.B.-2 is in school through Elwyn, and receives occupational therapy and speech therapy. **Id.** T.B.-1 receives speech therapy through Elwyn. **Id.** at 100-01. T.B.-2 does not attend day care. **Id.** at 101.

Anderson stated that Mother visits the Children once a week for two hours. **Id.** at 101. Beginning in January of 2011, the parents visited the Children for two hours a week at the Agency. **Id.** Anderson supervised the visits until August 24, 2012. **Id.** She noted that Mother was consistent with her visits between January of 2011 and June 24, 2011, but neither parent made any visits between June 28, 2012 and August 24, 2012. **Id.** at 102. Anderson has observed that the interaction between Mother and the Children

was positive, but Mother had to be prompted by Father as to the Children's needs, such as diaper changing. **Id.** at 102-03.

Anderson has observed the visits between the Children and Father, and stated that both Mother and Father attended all of the same visits. **Id.** at 107-08. Anderson stated that Mother did not miss any scheduled visit between January of 2011 and June of 2012, and the Children have positive interactions with Mother during the visits. **Id.** at 128. She has observed Mother have seizures during visits. **Id.** at 129.

On cross-examination by Father's counsel, Anderson testified that the only goal in Father's Individual Service Plan ("ISP") from his FSP was his visitation goal. **Id.** at 130. She did not dispute that Father had attended 102 of 116 visits between January of 2011 and February 8, 2013, and is very compliant with visits. **Id.** at 131. Anderson was not aware of any negative visits between Father and Children, and never observed Father acting inappropriately at the visits. **Id.** at 132.

Anderson believes there is a father/child bond between Father and L.B.-1. **Id.** at 110. L.B.-1 runs to Father, yells, "Daddy," and hugs and kisses him. **Id.** L.B.-1 does not cry when she leaves visits with Father, however. **Id.** Anderson believes there is a father/child bond between Father and L.B.-2, because L.B.-2 runs directly to Father and hugs him. **Id.** at 110-111. L.B.-2 goes willingly with his foster parent at the conclusion of the visits without crying. **Id.** at 111. Anderson also believes there is a

father/child bond between Father and T.B.-1, but the child willingly leaves without crying after the visits. **Id.** She also believes there is a father/child bond between T.B.-2 and Father because the child seeks Father out when she needs assistance, hugs and kisses him, and interacts with him during the visits. **Id.** at 111-12.

Anderson testified that Father does not inquire generally about the Children, but asks questions about L.B.-2 and his lead levels. **Id.** at 112. Father brings items to Anderson's office for the Children for special occasions. **Id.** Anderson also has observed a significant bond between the Children and their foster parents. **Id.** at 113-14. She was unable to give an opinion as to whether adoption would be in the best interest of L.B.-1. **Id.** at 114. DHS did not question her with regard to whether adoption is in the best interests of the other three children.

On cross-examination by the Child Advocate, Anderson stated that she did not know why the parents did not visit the Children between June 28, 2012 and August 24, 2012. **Id.** at 115. Ms. Anderson stated that, when the parents did not visit, T.B.-1 was the only child who appeared to be affected. **Id.** at 116. He would ask about his parents, and his foster parent noted changes in his behavior. **Id.** She believed that T.B.-2 adjusted and appeared to heal with time. **Id.** Anderson opined that, if the bond between the parents and the Children were to be severed, the Children would suffer some initial harm, but would recover. **Id.** at 116-17.

The respective foster parents for the Children are willing to adopt them. **Id.** at 117. Anderson stated that L.B.-1 has made great progress in the care of her foster parents. **Id.** at 119-20.

Anderson explained that the visits are unstructured; Father brings food, and the Children eat and play with their parents. **Id.** at 118. Anderson explained that the supervised visits in the parents' home were returned to Devereaux after Father made a hostile outburst in court on June 28, 2012, that did not involve hostility toward the Children. **Id.** at 121. Anderson felt unsafe supervising the visits in the home of the parents after Father's courtroom outburst. **Id.**

On cross-examination by Mother's counsel, Anderson responded that Mother was in compliance with her ISP objectives, which were drawn from her FSP objectives. **Id.** at 123-25. Anderson stated that the Children have positive interactions with Mother during the visits, and that Mother did not miss any scheduled visit between January of 2011 and June of 2012. **Id.** at 128. She has observed Mother have seizures during visits. **Id.** at 129.

On cross-examination by Father's counsel, Anderson testified that the only goal in Father's ISP from his FSP was his visitation goal. **Id.** at 130. She did not dispute that Father had attended 102 of 116 visits between January of 2011 and February 8, 2013, and was compliant with visits. **Id.** at 131. Anderson was not aware of any negative visits between Father and the

Children, and never noted him acting inappropriately. **Id.** at 132. She was aware that Father would like to have custody of the Children. **Id.** at 132.

On re-direct examination by DHS, Anderson stated that, although the parents do not send cards and/or presents, they bring items to the visits. **Id.** at 133. On re-cross examination by Father's counsel, Anderson testified that Father had brought toys and gifts for the Children to visits on October 19, 2012, and October 26, 2012, and that it was more appropriate to bring them than to send them. **Id.** at 134. She acknowledged that she never corrected Father for acting inappropriately as a parent. **Id.** at 135.

DHS then presented the expert testimony of William Russell, Ph.D. ("Russell"), a licensed forensic psychologist at Assessment and Treatment Alternatives, Inc. ("ATA") with expertise in parenting and custody, who performed a parenting capacity evaluation of Father on February 7, 2012. **Id.** at 135-36; DHS Exs. 7, 8. Russell testified that he conducted an evaluation of Father's ability to provide for the safety and permanency of the Children, and that Father was aware of the purpose of the evaluation. N.T., 2/12/13, at 138-39. He observed that Father was very concerned about having the Children returned. **Id.** at 139. Russell found that Father presented to him consistently with his history of paranoid schizophrenia. **Id.** at 140. Russell's conclusion regarding Father's day-to-day functioning was that, if Father was compliant with medication and therapy, he is able to function quite adequately in the family environment. **Id.** Russell opined

that, if Father is consistent with his medication and maintains treatment standards, he is capable of providing for the Children. **Id.** at 140-41.

Next, DHS presented the expert testimony of Alex Bonnea ("Bonnea"), the treating therapist for Father at Northeast Community Mental Health Center. **Id.** at 173. Bonnea testified that Father met with him twenty-eight times between February 2011 and August 24, 2012. **Id.** at 178. On cross-examination by Father's counsel, Bonnea stated that Father has been irregularly compliant with his treatment, in that he does not attend therapy as regularly scheduled. **Id.** at 181-82. Father also received medication checks and family therapy at Northeast Community Mental Health Center. **Id.** at 184. Bonnea testified that Father is actively participating in mental therapy with him, and has made moderate progress. **Id.** at 185-86, 188. Bonnea also testified that Father attended medication management appointments, but missed some appointments. **Id.** at 188.

DHS presented the expert testimony of Doris Biaz ("Biaz"), the treating therapist for Mother at Northeast Community Mental Health Center. **Id.** at 189. Biaz testified that she had treated Mother approximately sixteen times between February 2011 through August of 2012. **Id.** at 189-90. On cross-examination by Mother's counsel, Biaz testified that Mother had made progress during her sixteen visits, and that she had participated in therapy. **Id.** at 191.

Thereafter, DHS presented the expert testimony of Daniel Potoczmiak ("Potoczmiak"), a self-employed licensed psychologist who performed a biopsychosocial evaluation of Mother in January of 2012. **Id.** at 155-60. He assessed Mother as having dependent personality characteristics, and being dependent on Father. **Id.** at 162-63, 165-66. He recommended a program for individuals diagnosed with mild mental retardation or intellectual disability to help Mother function more independently. **Id.** at 165-66. On cross-examination by the Child Advocate, Potoczmiak testified that Mother stated she loved the Children. **Id.** at 167. On cross-examination by Father's counsel, Potoczmiak stated that he had no opinion as to Mother's capacity to care for the Children, only as to her general level of functioning. **Id.** at 168.

Mother also testified on her own behalf at the hearing on February 12, 2013. **Id.** at 195.

At the hearing on February 25, 2013, DHS presented the expert testimony of Erica Williams, Ph.D. ("Williams"), a licensed psychologist at ATA, who performed a parenting capacity evaluation of Mother on October 3, 2011. N.T., 2/25/13, at 11. At the time of the evaluation, Williams had significant concerns about Mother's ability to parent because of DHS's concerns about Father and his effect on the Children and Mother. **Id.** at 22. Mother made clear to Williams that she and Father would parent as a unit. **Id.** Williams expressed concerns about Mother's ability to parent the

Children on her own because of their developmental delays. **Id.** at 24. She offered no opinion regarding reunification of Mother and the Children, but had significant concerns about placing the Children in Mother's care because of Mother's parental incapacity. **Id.** at 24-25.

Father then testified on his own behalf.

In Orders dated and entered on February 25, 2013, the trial court denied the Petitions without prejudice and provided six months to determine whether the parents could prove themselves as capable of caring for the Children. **See** N.T., 2/25/13, at 68-74.

On March 25, 2013, the Child Advocate, on behalf of the Children, timely filed Notices of appeal and Concise Statements of Errors Complained of on Appeal, pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b). This Court, acting *sua sponte*, consolidated the appeals on April 22, 2013. The trial court adopted its on-record decision in its Rule 1925(a) opinion. **See** Trial Court Opinion, 5/21/13, at 1.

On appeal, the Children raise five issues:

1. Whether the lower court's decision denying the petition for involuntary termination of Mother ... should be reversed when the lower court explicitly found Mother incapable of parenting, and the record contains clear and convincing evidence that grounds existed under 23 Pa.C.S.A. § 2511(a)(1), (2), (8) and (b) with no evidence to the contrary[?]
2. Whether the lower court's decision denying the petition for involuntary termination for Father ... should be reversed when the record contains clear and convincing evidence that grounds existed under 23 Pa.C.S.A. § 2511(a)(1), (2), (8) and (b) with insufficient evidence to the contrary[?]

3. Whether the lower court committed an abuse of discretion requiring reversal when it denied the petition for involuntary termination for Father ... and instead gave Father more time to remedy the conditions that led to placement when the Children had been in placement for over two years and the conditions that led to their removal continued to exist at the time of the termination proceedings[?]
4. Whether the lower court erred when it refused to terminate the parental rights of Father ... and Mother ... when there was no evidence supporting a finding of the existence of a parental bond and the evidence of record demonstrated that, even if there was a bond, it could be terminated without causing long-term harm to the Children, and when the lower court failed to weigh all the factors pertinent to the needs and welfare of the Children pursuant to 23 Pa.C.S.A. § 2511(b)[?]
5. Whether the lower court erred when it refused to change the goal to adoption when the evidence demonstrated it was in the best interest of the [Children] and there was no competent evidence to the contrary[?]

Children's Brief at 5-6.²

We review an appeal from the termination of parental rights in accordance with the following standard:

In an appeal from an order terminating parental rights, our scope of review is comprehensive: we consider all the evidence presented as well as the trial court's factual findings and legal

² We observe that the Children raised six issues in their Concise Statement, but omitted issue 4 from their Statement of Questions Involved portion of their brief. Issue 4, as set forth in their Concise Statement, was: "[whether] [t]he [trial court] erred when it refused to terminate parental rights of Father, L.B.[,] and Mother, T.H.[,] under 23 Pa.C.S.A. § 2511(a)(1) where there was clear and convincing evidence that demonstrated that over a two[-]year period both parents refused to address their Family Service Plan objectives, and thus they evidenced a settled purpose of relinquishing claim to this child [*sic*] or refused to perform parental duties." As issue 4 appears to be duplicative of issues 1 and 2 in the Children's Statement of Questions Involved, we find that the Children have not waived that issue.

conclusions. However, our standard of review is narrow: we will reverse the trial court's order only if we conclude that the trial court abused its discretion, made an error of law, or lacked competent evidence to support its findings. The trial judge's decision is entitled to the same deference as a jury verdict.

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

Termination of parental rights is controlled by section 2511 of the Adoption Act. **See** 23 Pa.C.S.A. § 2511. The burden is upon the petitioner "to prove by clear and convincing evidence that its asserted grounds for seeking the termination of parental rights are valid." ***In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009). "[C]lear 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.*** (citation and quotation marks omitted). Further, the "trial court is free to believe all, part, or none of the evidence presented and is likewise free to make all credibility determinations and resolve conflicts in the evidence." ***In re M.G.***, 855 A.2d 68, 73-74 (Pa. Super. 2004). If competent evidence supports the trial court's findings, "we will affirm even if the record could also support the opposite result." ***In re Adoption of T.B.B.***, 835 A.2d 387, 394 (Pa. Super. 2003).

Satisfaction of any one subsection of section 2511(a), along with consideration of section 2511(b), is sufficient for the involuntary termination of parental rights. ***In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*).

Section 2511 provides, 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.

(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.

* * *

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

* * *

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

23 Pa.C.S.A. § 2511.

The Children contend that the trial court erred in failing to terminate the parental rights of Mother and Father under section 2511(a)(1), (2), and (8),³ where they have been unable or refused to remedy the conditions that led to the Children's placement in January of 2011, more than two years prior to the hearing on February 12, 2013. **See** Children's Brief at 17-30. The Children assert that the conditions that led to their removal continue to exist because Mother and Father have refused to comply with their FSP goals, and have failed to perform their parental duties. **Id.** Further, the Children argue that the trial court abused its discretion in giving the parents additional time to remedy the conditions that led to the placement, because Father had not progressed beyond supervised visitation and had unabated mental health and aggression issues. **Id.** at 21, 24, 28-29. The Children claim that the trial court abused its discretion in refusing to terminate Mother's parental rights where it explicitly found Mother incapable of parenting, on the record at the hearing, and denied the termination Petition as to Mother on the basis that it was allowing more time for Father. **Id.** at 24-26.

The trial court provided the following analysis with regard to section 2511(a):

³ We note that the Children do not raise any claims regarding section 2511(a)(5), despite the fact that DHS sought to terminate the parental rights under this section.

[T]he [trial court] found that DHS did not present clear and convincing evidence in support of its Petitions to Involuntarily Terminate the Parental Rights as required by 23 Pa.C.S. § 2511.

More specifically, the [trial court] found that termination of Mother and Father's parental rights was premature for several reasons. First, the [trial court] heard competent testimony on the record that Mother and Father were in substantial compliance with their [FSP] objectives set forth by DHS. Specifically, both Mother and Father had completed parenting classes. N.T., 2/12/13 at 65, 76. Mother and Father's home was also appropriate as of the last court hearing.^[fn] **Id.** at 81-82. DHS no longer had any concerns regarding any drug and/or alcohol issues for Father. **Id.** at 57, 74-76. With respect to mental health, Father had been attending mental health treatment at the same program since 2006. **Id.** at 83-84. Although there was testimony that Father did not attend therapy as consistently [as] he should have, Father actively participated in the therapy and made "moderate progress" in therapy. **Id.** at 183, 185-188. There was also testimony that Father attended medication management but sometimes missed some appointments. **Id.** at 188. Mother had also made progress in her own therapy. **Id.** at 191. In addition, there was testimony that both parents had made progress in setting age appropriate expectations for their children. **Id.** at 54.

Furthermore, there was testimony presented that both Mother and Father were extremely compliant with visiting the [C]hildren while the [C]hildren were in placement. **Id.** at 101-102, 131. Indeed, they made 102 out of 116 visits with the [C]hildren. **Id.** at 131. There was ample testimony that the visits with the [C]hildren went well and that both Mother and Father had positive interactions with the [C]hildren during the visits. **Id.** at 102, 108, 132.

The [trial court] further found that termination of Mother and Father's parental rights was premature based on the testimony of DHS's own expert in forensic psychology, [] Russell. [] Russell conducted a parenting capacity evaluation on Father. **Id.** at 136. He stated that Father presented with a history of paranoid schizophrenia at the time of the evaluation. **Id.** at 139. At the termination hearing, [] Russell was asked to opine on whether Father had the capacity to parent his children. []

Russell testified that Father had the capacity to parent his children as long as he was consistent with his medication and therapy. *Id.* at 140-141. Specifically, [] Russell testified:

The basic conclusion regarding [Father's] day-to-day functioning was that if he is compliant with medication and therapy, he is able to function quite adequately in the environment.... If [Father] is consistent with his medication and maintains treatment standards, he is capable of providing for his children.

Id. The [trial court] found [] Russell's testimony significant because it showed that Father has the ability to adequately parent his children if given the opportunity to be consistent with therapy and medication. The [trial court] decided to give Father six months to prove he could be consistent with attending his therapy and taking his medication before considering whether or not to terminate his parental rights.

^[fn] DHS social worker [] Richardson testified that she could not determine, at the time of [the] termination hearing, whether Father had appropriate housing. N.T., 2/12/13 at 82, 88-89. However,[] Richardson testified at the termination hearing that Father's housing was appropriate at the last court hearing and that he was still living at the same address at the time of the termination hearing. *Id.* at 81-82. At the conclusion of the termination hearing, the [trial court] ordered DHS to evaluate Father's home again. N.T., 2/25/13 at 73.

Trial Court Opinion, 5/21/13, at 1-3 (footnote in original).

Here, the Children have been removed from parental care since January 2011. However, the evidence does not demonstrate that the parents evidenced a settled intent to relinquish parental claim to the Children or failed to perform parental duties necessary for the Childrens' physical or mental well-being. *See* 23 Pa.C.S.A. § 2511(a)(1), (2). Further, the trial court found DHS's evidence was insufficient regarding whether the

conditions that led to the removal or placement of the Children continued to exist, and found a need for further investigation and testimony. With regard to whether the termination of parental rights would best serve the needs and welfare of the Children, the trial court found DHS's evidence insufficient. The trial court pointed out that Anderson did not testify that adoption would be in the best interest of the Children at the time of the February 12, 2012 hearing. **See** Trial Court Opinion, 5/21/13, at 4; N.T., 2/12/13, at 114. Here, we must defer to the trial court's decision, as the factual findings with regard to section 2511(a) 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. **See In re Adoption of S.P.**, 47 A.3d 817, 826-27 (Pa. 2012).

Regarding section 2511(b), the court inquires whether the termination of the 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.**; **see also In re K.Z.S.**, 946 A.2d 753, 762-63 (Pa. Super. 2008) (stating that where there is no evidence of any bond between the parent and child, it is reasonable to infer that no bond exists). Additionally, "the strength of emotional bond

between a child and a potential adoptive parent is an important consideration in a 'best interests' analysis." ***In re I.J.***, 972 A.2d 5, 13 (Pa. Super. 2009). Finally, the focus in terminating parental rights under section 2511(a) is on the parent, but it is on the child under section 2511(b). ***In re Adoption of C.L.G.***, 956 A.2d at 1008.

The Children contend that the termination of the parental rights was in their best interests. Children's Brief at 30-37. The Children argue that Mother could not meet their needs and that they had bonded with their foster parents. ***Id.*** at 31-32. The Children further argue that even though Father and the Children have a bond, the termination of this bond would not harm the Children. ***Id.*** at 32, 34-37.

With regard to section 2511(b), the trial court found as follows:

[T]he [trial court] did not find that it would be in the best interests of the [C]hildren to terminate their Mother and Father's parental rights under 23 Pa.C.S.[A.] § 2511(b) because the [trial court] found that a parent-child bond existed between Father and the [C]hildren. . . .

* * *

Here, the [trial court] found by clear and convincing evidence that a loving, parent-child bond exists between Father and the [C]hildren. N.T., 2/25/13 at 68. There was unrefuted testimony on the record by DHS's own witness, agency worker [] Anderson, that the [C]hildren are very bonded to Father. N.T., 2/12/13 at 110-111, 116. [] Anderson testified that the [C]hildren were always excited to see Father during the visits and would cry if Father had to leave the room during the visits. ***Id.*** at 108. She also stated that the [C]hildren would hug and kiss Father throughout the visits. ***Id.*** at 110-111. [] Anderson testified that Father was always appropriate with the [C]hildren during the visits and there was never any negative behavior by

Father toward his children during any of the visits. **Id.** at 132. Significantly, [] Anderson could not say whether or not adoption was in the [C]hildren's best interests. **Id.** at 114. Accordingly, [the trial court] could not conclude that severance of the parent-child bond would be without detrimental effects on the [C]hildren. For these reasons, the [trial court] respectfully submits that its decision denying DHS's Petition to Involuntarily Terminate the Parental Rights of Mother and Father and Change the Goal to Adoption should be affirmed.²

² Importantly, the [trial court] denied the Petitions *without prejudice*. The [trial court] made it clear that it was only giving Father six months to be fully compliant with his FSP objectives and that he may lose his parental rights in the future if he does not comply. N.T., 2/25/13 at 73.

Trial Court Opinion, 5/21/13, at 3-5 (footnote in original).

We conclude that the trial court's factual findings with regard to section 2511(b) 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. Thus, we must defer to the trial court's decision. ***In re Adoption of S.P.***, 47 A.3d at 826-27.

As an addendum, we note the following. Recently, our Supreme Court, in ***In re T.S.M.***, 71 A.3d 251 (Pa. 2013), addressed a situation in which the trial court had denied petitions for the termination of the parental rights of a mother to the five youngest of her seven children. ***In re T.S.M.***, 71 A.3d at 253. Each child had been in six to thirteen foster placements, and each was experiencing significant psychological and behavioral problems. **Id.** The trial court found that the evidence supported the termination of parental rights under section 2511(a)(2); however, the trial

court also found that termination did not best serve the needs and welfare of the children required under section 2511(b), as well as subsection 2511(a)(5) and (a)(8). **Id.** at 259-60. The trial court pointed to the evidence of a strong bond between the children and mother. **Id.** at 260. This Court, in a split decision, affirmed the trial court's order. **Id.** at 260-61.

Our Supreme Court noted that while the parent-child bond was strong, the trial court minimized the children's unhealthy and pathological bond with mother. **Id.** at 271. The Supreme Court noted that the trial court failed to recognize the substantial, possibly permanent, damage done to the children by the prolonged, unhealthy, pathological bond with their mother that was preventing the Children's ability to form attachments to their foster families. **Id.** at 271. Based upon this evidence, the **In re T.S.M.** Court concluded that the termination of the mother's parental rights would best serve their needs and welfare as mother had the benefit of services for more than five years and showed no potential to be able to parent the children in any reasonable period. **Id.** Accordingly, the Supreme Court concluded that the trial court had abused its discretion in denying the termination petition. **Id.**

Here, unlike the situation in **In re T.S.M.**, the testimony of Richardson and Anderson supported the trial court's finding that there is a bond between the Children and their parents, and that they express their love and excitement at seeing their parents. There was no evidence that the bond between the Children and the parents was harmful, or that the denial of the

termination Petitions would interfere with their ability to find loving homes with foster parents willing to adopt them. Thus, this Court finds ***In re T.S.M.*** distinguishable from the instant appeal.

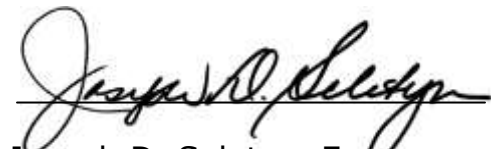
Finally, the Children contend that the trial court erred in refusing to change the goal to adoption when the evidence demonstrated that the goal change was in the Children's best interests. Children's Brief at 37-39.

"The standard of review for an order changing the placement goal of a dependent child is abuse of discretion." ***In re K.D.***, 871 A.2d 823, 825 n.1 (Pa. Super. 2005). "In deciding a change of placement goal request, the trial court must consider the best interest of the child and whether the parent has substantially complied with the family service plan goals." ***Id.***

Here, there was an absence of clear and convincing testimony from the DHS witnesses at the hearings that adoption was in the best interest of the Children. Accordingly, we find no abuse of the trial court's discretion in denying the termination/goal change Petitions without prejudice.

Orders affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/19/2013