

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA  
ORPHANS' COURT DIVISION**

**IN RE:** : **NO. 6353**  
:   
**PD, and** :   
**ED,** :   
:   
**minor children,** :

**OPINION AND ORDER**

**AND NOW**, this 30<sup>th</sup> day of **August, 2013**, before the Court is Lycoming County Children & Youth Services' ("Agency") Petition for Involuntary Termination of Parental Rights of Mother, AL ("Mother"), and Father, DD ("Father"). A Petition regarding ED was filed on November 16, 2012. A Petition regarding PD was filed on March 4, 2013. A Hearing on the Petition to Involuntarily Terminate Mother's and Father's parental rights was commenced on June 4, 2013 and ended on June 5, 2013. Charles Greevy, Esquire, Solicitor for the Agency, Jerry Lynch, Esquire, counsel for Mother, Jenna Neidig, Esquire, counsel for Father, and John Pietrovito, Esquire, Guardian Ad Litem were present.

**Finding of Facts**

ED was born on May 8, 2009. PD was born on October 25, 2011. They are the children of AL, date of birth January 14, 1987, and DD, date of birth March 21, 1980.

The Agency became involved with the parents during the period of April, 2009, through June, 2009, due to deplorable home conditions. At that time, only ED was born. No services were implemented at that time as the parents made strides towards keeping the home clean.

From January through March, 2010, the Agency became involved with the parents again due to deplorable home conditions. At that time, Outreach Services were provided and the parents made progress towards keeping their home appropriate for the child.

On February 22, 2011, the Agency again received a report of deplorable home conditions. At the Agency's request, ED was taken to stay at the paternal grandmother's home. She was returned to the parents on the next day when the conditions were re-examined and found to be safe and acceptable.

On March 17, 2011, ED was again voluntarily placed in the home of the paternal grandmother at the request of the Agency due to deplorable home conditions. The next day, ED was returned to the parents' home once it was assessed and found to be safe and appropriate.

On March 6 through March 8, 2011, ED was again removed from the parents' home due to the condition of the parents' home. On March 23, 2011, the Agency implemented a family service plan.

On April 12, 2011, the Agency filed a Dependency Petition on behalf of ED. A hearing on the Petition was held on April 29, 2011, at which time ED was found to be a dependent child. The primary allegations in the Petition centered around deplorable home conditions and the inability of the parents to keep the home safe and appropriate. During the dependency hearing, the Master recessed the hearing and requested workers from the Agency to go to the home and return with photographs. The photographs showed the home to be unsafe for young children in that there were multiple choking

hazards on the floor, dirty plates in multiple places in the living room, overflowing garbage receptacles, dirty dishes with mold growing on them piled in the bathtub, and at least one dirty diaper on the floor. ED was placed in an Agency-approved kinship resource home with the paternal uncle, DaD and his paramour, DS.

On August 23, 2011, a permanency review hearing was held. The Court ordered the biological parents to continue couples' counseling, keep their home in satisfactory order with appropriate cleanliness, and continue to cooperate with the Agency and Outreach workers, as well as continue parenting classes. The parents were approved to have visitation with ED three days per week in their home.

On October 7, 2011, a permanency review hearing was held. At that time, the Court found that there had been substantial compliance by both parents with the permanency plan and that they had maintained adequate home conditions. Additionally, the parents were attending couples' counseling and were cooperating with the Agency. ED continued to be adjudicated a dependent child; however, she was returned to the legal and physical custody of her parents.

On October 25, 2011, PD was born.

On January 31, 2012, a permanency review hearing was held. At the review hearing, the Court found that the conditions which led to ED's original removal from the parents' home have returned and the Court, again, removed ED from the physical custody of the parents. ED was again placed in the resource home of the paternal aunt and uncle who were now married. The Outreach worker found the home conditions to be inconsistent. The Outreach worker described the home to be so cluttered with objects and

clothing that one could not walk without stepping on something and that there was an overwhelming smell of urine. On one occasion, feces were smeared on the toilet and dirty dishes and food had been found on the table and on the countertops. The caseworker expressed frustration that the Agency has not been able to take a step back from this family and needed to continue to have at least one visit per week in the home. The caseworker expressed that in light of the fact that the child was returned home, there should no longer have been a need for the Agency to continue to have such frequent contact with the family in the home. The Court also found that if the case were progressing properly, there would no longer be a need for the caseworkers to be in the home on such a frequent basis. During the review period, ED was diagnosed with Trichotillomania, which is defined as the compulsive urge to pull out one's own hair leading to notable hair loss. The Court also noted that during the last review period, the parents welcomed a new child into their home, PD. PD was not deemed a dependent child at that time.

A permanency review hearing was held on March 16, 2012. The Court found there to be moderate compliance with the Permanency Plan by Mother and Father. No safety concerns were noted in the home during the review period and visits with the child were permitted to take place in the home. Significant clutter, however, continued to remain an issue. Mother managed her medications through Community Service Group, attended some couples counseling sessions, but had no parenting classes since mid-January. Father attend one anger management class, couples counseling at Community

Service Group, but stopped attending parenting classes on January 18, 2012. The child continued to be adjudicated dependent and remained in the kinship resource home.

On April 24, 2012, a permanency review hearing was held. During this review period, the Court found that both Mother and Father had minimal compliance with the permanency plan in that the Mother had not become involved in parenting classes, though referred on many occasions. Outreach Services closed their case as progress had not been evident while services were provided to the family. Father was discharged from counseling due to non-compliance and had failed to initiate counseling through a new provider. He also failed to complete the fatherhood program to which he was referred. The parents moved into a new home and home conditions were improving. The Court ordered the parents to resume couples counseling to improve their relationship in light of past domestic violence between the parties. The parents were granted overnight weekend visits in their home conditioned upon the house being in good order.

On June 15, 2012, a dependency petition was filed on behalf of the parties' eight month old daughter, PD. On July 3, 2012, a permanency review hearing was held in the interest of ED and the dependency hearing was held in the interest of PD. The Court found minimal compliance by both parents with the Permanency Plan and that the home conditions remained minimally acceptable, at best. Mother had just made contact with Expectations for Women and initiated couples counseling. Father completed the fatherhood program but had not enrolled in any anger management counseling. The Court noted that the Agency had many referrals to service providers in an effort to assist Mother and Father, Outreach Services had been utilized but closed due to parents' failed

progress over a lengthy period of time. Dependency of ED was reaffirmed. After a hearing, PD was found to be a dependent child. The Court ordered ED to remain in the legal and physical custody of the Agency with placement in the paternal aunt and uncle's home, but allowed PD to remain in the legal and physical custody of her parents. As PD was not yet mobile, the safety concerns of the clutter and small objects lying on the floor was not as big of a concern. The Court ordered the Agency to continue to inspect the home before ED's visits and to withhold visitation if conditions were not in good order. The Court noted that it believed it was PD's best interest for the parents to be allowed the opportunity to improve the home conditions, but cautioned the parents that if home conditions were not resolved, the Court would look strongly to removing PD from the home.

On July 10, 2012, a domestic situation occurred between the parents and the police were called to respond. Mother left the residence with the child, PD, and went to Wise Options, a women's shelter temporarily. By July 12, 2012, the parents were against residing together.

Also on July 10, 2012, the Agency filed a Motion to Change Visitation to discontinue the overnight visitation of ED with her parents so that the visits with ED would occur at a location that was safe and appropriately supervised by the Agency. On July 11, 2012, the Court issued an order granting the Agency's Petition and indicated pending the next review hearing, that the Agency had full discretion to modify the visitation arrangements for ED however the Agency deemed appropriate to assure the child's safety.

On July 29, 2012, another incident of domestic violence occurred between Mother and Father to which the police responded. Mother pursued a Protection from Abuse Order against Father and was granted a temporary Protection from Abuse Order.

On August 10, 2012, the Agency conducted a home visit at Mother's home and the home conditions were found to be deplorable and safety issues present. Mother voluntarily placed PD in the Agency's custody at that time. PD was placed in the resource home of the paternal aunt and uncle with ED.

A Permanency Review Hearing was held on August 28, 2012. The Court reaffirmed the dependency of ED and PD and ordered the children to remain in the physical and legal custody of the Agency for placement in the paternal aunt and uncle's home. The Court ordered that the specific terms of visitation of both children with their parents were to be left to the Agency's discretion. The Court encouraged the Agency to work towards visits in the community or back in the parents' home setting, if the setting was appropriate. The Court specifically ordered, however, that if visits occurred in the community or in the parents' home, that the parents were not to be together visiting with the children at any time. The parents continued to remain separated due to the domestic violence incident which occurred between the parents. Mother advised the Court that there was a final hearing on the Protection from Abuse matter scheduled for August 31, 2012, at which time she intended to withdraw the Protection from Abuse matter. In light of the fact that Mother was withdrawing the matter and based upon the parties' history of domestic violence, the Court ordered Father to undergo a free screening to determine if he was a candidate for the Men against Abuse Program. At the Permanency Review

Hearing, both Mother and Father requested the Court to schedule an early review hearing. The Court denied the request and ordered a review to be scheduled within 90 days. The Court specifically indicated that the request was denied in light of the history of the case where the parents had such an up and down history of being able to maintain their home in a suitable condition for the children and also in light of the recent domestic violence situation that occurred with Father. The Court specifically stated that before it would consider any change in the current status quo of the children, there must be at least 90 days of stability and cleanliness demonstrated by the parties.

A Permanency Review Hearing was held on November 6, 2012. The Court reaffirmed the dependency of ED and PD and ordered both children to remain in the legal and physical custody of the Agency with placement in the paternal aunt and uncle's home. The Court ordered that the specifics of the visitation of both children with the parents would be left to the Agency's discretion. The Court specifically ordered Mother to continue her regular visitation with the children, complete the current anger management program she started with the Salvation Army, continue her individual counseling, continue to take her medication as prescribed, attend her own medical appointments, continue to maintain a clean and safe home, answer the door when caseworkers appear at her home and have regular appointments with her Outreach Worker. She was also urged to participate in relationship counseling with Father. The Court specifically cautioned Mother that she had reached a point where she needed to step up to the plate to make sure she is able to be reunited with her children. The Court expressed disappointment that Father continued to have a lack of follow through and

expressed its concern that it may be Father's inaction which ultimately causes Mother's failure of reunification with her children. Father was specifically ordered to make arrangements and complete some type of anger management therapy or counseling and to undergo an assessment at West Branch Drug & Alcohol Abuse Commission to determine if he is a candidate for the Men against Abuse Program which Father had failed to do from the prior hearing. Father was ordered to continue to have regular visits with the children and to maintain a clean and safe home and to participate in relationship counseling with Mother. At the review hearing, the Court heard testimony and received a report from Dr. Dowell, a neuropsychologist, concerning ED. Dr. Dowell indicated that ED continues to present with a history of Trichotillomania. Dr. Dowell explained that while there were no specific stressors identified in this particular case, children with similar presentations tend to present with histories of unmet needs for safety/security such as exposure to domestic violence, inconsistencies, disorganization, poor planning with no schedule, aggression, etc., and belongingness such as broken relationships, violations of trust, breakdowns in integrity. The typical prominent role of the environment is reflected in a history of significant fluctuations in symptoms as a function of environmental stressors.

The Court specifically stated to the parents "the Court cannot stress enough to the parents that for the sake of their daughter, they need to get themselves stabilized so things can begin to stabilize things for ED".

A Permanency Review Hearing was held on February 19, 2013. The Court reaffirmed the dependency of ED and PD in ordered the children to remain in the

physical and legal custody of the Agency in the paternal aunt and uncle's home. While the Agency argued that there had been no improvement in regard to the parents, the Court disagreed and determined that there had been some improvement by both parents. The Court continued to have a significant concern regarding the inconsistency which has been the theme with both parents since the case inception in 2011. The Court in detail reviewed its prior directives to Mother and her compliance. The Court determined that Mother never returned to anger management program that she had been ordered to complete and really had no explanation as to why she failed to complete it despite the Court directive. Mother failed to continue the individual counseling she was ordered to participate in at the last hearing with Diakon and it was terminated due to her failure to attend appointments. Mother, however, indicated to the Court she had followed through with obtaining new counseling at Crossroads. The Court commented that this was again a clear example of Mother's inconsistencies. The Court noted that Mother had chosen to stop taking her medications as ordered and instead, decided to take an over-the-counter medication, St. John's Wort. Mother missed her appointment for maintaining her medication through Diakon and was released due to her failure to attend appointments. Mother did, however, set up a new appointment with Crossroads for medication maintenance. The Court again reiterated its concerns that Mother sets things up and fails to follow through. Based upon the photographs provided to the Court, the Court assessed that Mother had not maintained a clean and safe home as she was ordered to do. The Court found it was clear that Mother had the ability to have a clean home and she demonstrated in a 24 hour period to have her house go from some of the worse conditions

seen by the Caseworker to the house looking acceptable. The Court again pointed out that unsafe home conditions are what led primarily to the children's original placement and still appears to be Mother's biggest struggle. The Court did find that Mother took the Court's directive and maintained regular contact with her Caseworker when she had not heard from her. The Court ordered Mother to do the following pending the next review hearing:

1. Continue regular visitation with the children (the Court notes that this has not been a problem for mother).
2. Resume her prior anger management program and complete the program through the Salvation Army.
3. Continue individual counseling with Crossroads.
4. Maintain the scheduled appointment with the physician on March 1, 2013 at Crossroads and take any medication as prescribed by that physician.
5. Attend all of her own scheduled medical appointments.
6. Maintain a clean and safe home throughout the entire review period.
7. Answer the door when the caseworker appears at her home and have regular contact with both her caseworker and her Outreach Worker.
8. Contact Expectations for Women to explore any programming or individual work that can be done to help mother organize and maintain a clean home.

The Court found that Father had followed through with the things the Court had previously ordered him to do. Father underwent the assessment for the MAAP program and, at the time of the review hearing, had begun the 26 week program. The Court noted that its biggest concern with Father at that time was the home conditions and his stability. The Court also noted that there had not been completion of the couples counseling between Mother and Father which was previously ordered by the Court. The parents

were once again stating to the Court that they were beginning such counseling. The Court stressed to the Agency, despite the Agency's concern regarding visits in the community, that the Court did not hear anything that would prohibit the Agency from working towards visits in the community between the children and their parents. The Court's only directive is that the visits should not occur when the parents are together.

A Permanency Review Hearing was held on May 14, 2013. At the time of the Review Hearing, the Court reaffirmed dependency of ED and PD and ordered both children to remain in the legal and physical custody of the Agency with placement in the children's paternal aunt and uncle's home. The Agency again believed that the parents had made no progress and believed the parents had taken a step backwards. The Court, however, disagreed with the Agency and found that Mother has made more progress during this review period than any other review period. The Court, however, did express concern that Mother had changed homes during this review period. The Court indicated there was no way to determine whether or not Mother was able to maintain a clean and safe home in light of just recently moving into the residence; however, that this matter could be addressed at a future review by the Agency. The Court found that there had been some instability with the parents due to the breakup of their relationship. The Court found that Mother continued regular visitation, continued her individual counseling with Crossroads, maintained her scheduled appointment with the physician, and was taking her medication as prescribed. She attended her medical appointments, had regular contact with her Caseworker and Outreach Worker went to Expectations for Women and has attended some of the programming.

During the review period, Father discontinued attending the MAAP Program and the anger management counseling. Father did maintain employment and maintained visitation with the children along with having regular contact with the Caseworker and Outreach Worker. The Court expressed concern that the Agency had not been permitted to view Father's home and, at one point, the Caseworker was right outside of his residence and was denied access to the residence by Father. The Court expressed that the parents still had a significant amount of progress that needed to be done, but could not because the parents had taken a complete step backwards or had made no progress during the review period. The Court expressed some frustration with the Agency that there had not been community visits that the Court had previously directed. Additionally, the Court expressed some frustration with the Agency for what the Court viewed as small criticisms of the parents during visitation such as allowing the children to get up from the table while drinking out of a sippy cup. The Court specifically indicated it did not believe the parents would allow the children to be harmed in a public visitation setting and specifically ordered that there be some community visits between the parents and the children, however, specifically ordered that the visits shall not occur with the parents together and at no time should the parents be present together for a community visit.

On November 16, 2012, the Agency filed a Petition to Involuntarily Terminate the Parental Rights of Mother and Father regarding ED. The Agency did not request a hearing be scheduled. On March 4, 2013, the Agency filed a Petition to Involuntarily Terminate the Parental Rights of Mother and Father regarding PD. The Agency,

thereafter, requested a hearing on both Petitions. A hearing was held on the Petitions to Involuntarily Terminate the Parents' Parental Rights on June 4, 2013, and June 5, 2013.

At the time of the Termination Hearing, the Agency presented the testimony of TR, the Outreach Worker who worked with both parents. TR was involved with this family since August, 2012. Prior to that, the family had worked with a different Outreach Worker. TR testified that from August, 2012, to the present, she only met with the parents about 50% of the time of the scheduled visits, that throughout the time she has worked with the parents, she has seen no follow up or consistency with the parents. The parents' goals throughout involvement with Outreach Services were to maintain home conditions. TR testified that there was constant fluctuation in the conditions of the home, at times being good and at times being bad. She further testified that while the parents always listened to her when she spoke with them, the biggest problem was the parents' lack of follow through and lack of consistency.

CM, the Caseworker, testified that her involvement with the family began on April 29, 2011, when ED first came into care. Once ED was returned to her parents' custody in October, 2011, the case was transferred to another worker. CM again became involved with the case in February, 2012, when ED came back into care and remained involved in the case to the present. The focus of the case has been safety and home conditions, domestic violence, parenting deficits and lack of counseling. CM testified that the same issues that brought the family to the Agency are those issues that the Agency is still currently working on with the family. She also pointed out the fact that ED was returned to her parents' home initially after being removed only to be returned

back to Agency's care four months later due to the fact that the parents were never able to stabilize their home conditions. CM indicated that there have been on-going relationship issues between the parents which escalated to the point of a protection from abuse petition being filed. Though the parents, at this point, are separated, the status of the relationship remains questionable as they continue to frequently be seen together.

The Agency did arrange for a community visit for Father at the local library. Mother showed up during the visits. The parties allege that it was a coincidence. The Court does not find the parents' explanation credible. CM indicated that she could not be confident in another month we wouldn't be right back here with the parents. She expressed frustration regarding the parents in light of the fact that she has tried in so many different ways to help the parents rectify those issues which led to the children being placed. Based upon her experience with the family, CM does not believe that if the girls were to, at some point in the future; go home to the parents, that they would remain in home, as the parents have never been able to demonstrate any long lasting changes.

Bruce Anderson, a Licensed Psychologist, testified that he had completed an evaluation of both parents in August, 2011. Mr. Anderson also completed a permanency/bonding assessment of the children. In his assessment, he reviewed the notes and reports from the case, as well as interviewed and observed both children as well as both biological parents and the paternal aunt and uncle. Mr. Anderson found that both children were comfortable when he interviewed them with their parents and that there were no obvious concerns between the parents and the children during that interview. The children did not appear to be in distress. When he viewed the girls with the paternal

aunt and uncle, he found the children to be very affectionate to both the aunt and uncle. It was not the same type of interaction as the children had with the parents.

Bruce Anderson stated that his concern with the biological parents was that they both continue to struggle with a lot of issues and cannot provide a selfless understanding of what is needed for the children. He raises concerns of the parents being able to maintain stability and based upon the history and his knowledge of the parents, his prediction that ultimately the consistency with the parents will not change. Mr. Anderson stressed the fact that the removal back and forth of the children with their parents has not been good for the children as this ultimately leads to the breaks in their attachments. He indicated that this is especially true for ED in light of the symptoms that she is displaying.

Mr. Anderson discussed the significance of having a circular dialectic between a parent and child. He described it as a reciprocal connectedness between a parent and child with children expressing needs and parents responding appropriately to those needs. As a result, children become strongly attached to those who provide their care. While Mr. Anderson found that there was a bond between the biological parents and the children, he indicated that simply having a bond is not sufficient as their needs to be a circular bond between the child and parent where a child's needs are appropriately responded to. Mr. Anderson stated that he did not believe there would be irreparable harm to the children if the biological parents' rights were terminated.

### **Discussion**

The Agency argues that the basis for termination in this case may be found in 23 Pa.C.S. §2511(a)(1), (2), (5) and (8), which provides 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.

In order to involuntarily terminate parental rights, the party seeking termination must prove by clear and convincing evidence the grounds for termination. *Santosky v. Kramer*, 455 U.S. 745 (1982); *In re Adoption of J.D.P.*, 471 A.2d 894, 895, (Pa. Super. Ct. 1984). “The 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 hesitation, of the truth of the precise facts in issue.” *In re A.S.*, 11 A.3d 473, 477 (Pa. Super. Ct. 2010) (quoting *In re J.L.C. & J.R.C.*, 837 A.2d 1247, 1251 (Pa. Super. Ct. 2003)).

A court may terminate parental rights under Section 2511(a)(1) where a 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 the Interest of C.S.*, 761 A.2d 1197, 1201 (Pa. Super. 2000) (emphasis added). The Court should consider the entire background of the case and not simply:

mechanically apply the six month statutory provision. The court must examine the individual circumstances of each case and consider all explanations offered by the parent facing termination of his . . . parental rights, to determine if the evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination.

*In re: N.M.B.*, 856 A.2d 847, 855 (Pa. Super. 2004), appeal denied, 582 Pa. 718, 872 A.2d 1200 (2005) (citing *In re: D.J.S.*, 737 A.2d 283, 286 (Pa. Super. 1999)).

In determining what constitutes parental duties, the Pennsylvania Supreme Court has said:

There is no simple or easy definition of parental duties. Parental duty is best understood in relation to the needs of a child. A child needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the child. Thus, this Court has held that the parental obligation is a positive duty which requires affirmative performance. This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child. Because a child needs more than a benefactor, parental duty requires that a parent "exert himself to take and maintain a place of importance in the child's life."

With these principles in mind, the question whether a parent has failed or refused to perform parental duties must be analyzed in relation to the particular

circumstances of the case. A finding of abandonment, which has been characterized as "one of the most severe steps the court can take," will not be predicated upon parental conduct which is reasonably explained or which resulted from circumstances beyond the parent's control. It may only result when a parent has failed to utilize all available resources to preserve the parental relationship.

*In re: Burns*, 379 A.2d 535, 540 (Pa. 1977)(citations omitted). "When a child is in foster care, this affirmative duty requires the parent to work towards the return of the child by cooperating with the Agency to obtain rehabilitative services necessary for them to be capable of performing their parental duties and responsibilities." *In re: G.P.R.*, 2004 Pa. Super. 205, 851 A.2d 967, 977.

The Court finds that for a period of at least six months prior to the Agency's filing of the Petition to Terminate the parents' parental rights, the parents have failed to perform parental duties on behalf of their children.

ED has been in and out of the care of the Agency since April, 2011 when she was 2 years old. Prior to that time, on at least four occasions, ED was voluntarily placed by her parents in someone else's home until they were able to get their own home in an appropriate condition. PD has been removed from the care of her parents since August 10, 2012, when she was 10 months old. Throughout the entire time of their involvement with the Agency, the parents have both exhibited inconsistencies in their ability to maintain an appropriate safe home for their children and follow through with the directives of the Agency. Though the parents have been able for short periods of time to work to remedy their home conditions, there has never been a consistent period of time when the home conditions have been suitable for the children. The Court, itself, indicated to the parents that before the Court would ever consider returning the children

to the parents' home, they must maintain a suitable and safe home environment for the children for at least a 90 day period. The parents have never been able to maintain the home conditions for longer than the 90 day period. The Court agrees with both the analysis of the Caseworker, CM, and Bruce Anderson, a Licensed Psychologist, that there is little hope that the parents will be able to maintain a safe and suitable home for their children over the long term. Though during the last two review periods, both Mother and Father have made some progress, the progress is not sufficient for the Court to be satisfied that the parents living conditions are stable. In addition, the parents have failed to completely perform all of those things that the Agency has directed since the commencement of this case.

The Court hereby finds by clear and convincing evidence that the Agency has proven the requirements of 23 Pa.C.S. §2511(a)(1) and that both parents have failed to perform their parental duties for at least six months prior to the filing of the termination petitions.

To satisfy the requirements of Section 2511(a)(2), the Agency must demonstrate that the Mother and or Father through:

- (1) [R]epeated and continued incapacity, abuse, neglect or refusal;
- (2) such incapacity, abuse, neglect or refusal has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being; and (3) the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.

(2)

*In re: Adoption of M.E.P.*, 825 A.2d 1266, 1272 (Pa. Super. 2003.)

Under Section 2511(a)(2), “[t]he grounds for termination [of parental rights] due to parental incapacity that cannot be remedied are not limited to affirmative misconduct.

To the contrary, those grounds may include acts of refusal as well as incapacity to perform parental duties”. *In re: A.L.D.*, 797 A.2d 326, 337 (Pa. Super. 2002) (citations omitted). “Moreover, an agency is not required to provide services indefinitely if a parent is either unable or unwilling to apply the instruction given.” *Id.* at 340. “Parents are required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities. ... [A] parent’s vow to cooperate, after a long period of uncooperativeness regarding the necessity or availability of services, may properly be rejected as untimely or disingenuous.” *Id.*, quoting *In re J.W.*, 578 A.2d 952, 959 (Pa. Super. 1990).

The parents’ action exemplify a repeated and continued incapacity, neglect or refusal to act resulting in the children being without essential parental care, control, or subsistence necessary for their physical and mental well-being. In ED’s short life, she has been taken from her parents’ care on at least four occasions for a short duration of time so that they were able to rectify the deplorable home conditions of their home. ED was found to be a dependent child and completely removed from the parents’ care from April, 2011, through October, 2011. The primary issue for ED’s removal centered around the deplorable home conditions and the inability of the parents to keep their home safe and appropriate. There also remained issues of domestic violence between the parents. Once ED was returned to her parents in October, 2011, she only remained in their physical custody for only three short months when she was again removed due to deplorable home conditions. Since the removal from her parents’ home in January, 2012, the parents have continued to exhibit inconsistencies in regard to maintaining a safe and

acceptable home for the children, the parents have been involved in domestic violence altercations, the parents have changed homes, and the parents have failed to follow through on a consistent basis with the recommendations of the Agency in regard to services. ED, at the young age of 2 ½ was diagnosed with Trichotillomania. It is clear from the testimony of Dr. Dowell that the exposures that ED has had during her life to domestic violence, inconsistencies, disorganization, removal from and returning to her parents are for significant periods of time, has led to her current condition. Clearly the life that ED has been exposed to with her parents has not provided for her mental well-being and further, the Court is in no way assured that the parents will ever be capable of becoming consistent enough to appropriately provide for her mental well-being.

PD has been removed from her parents' physical custody since her mother voluntarily placed her with the Agency on August 10, 2012. In PD's short life, she has also been exposed to domestic violence and the inconsistencies in her parents' household. Though the parents have made some strides towards rectifying those issues which cause their children to be removed from their custody, based upon the history of the case, there is no assurance by the Court that the parents will ever be able to maintain the consistency in the long-term for the children.

The Court finds by clear and convincing evidence that the Agency has fulfilled 23 Pa.C.S. §2511(a)(2) by demonstrating both Mother's and Father's repeated and continued incapacity, abuse, neglect or refusal and that such incapacity, abuse, neglect or refusal has caused the children to be without essential parental care, control, or subsistence necessary for their physical and mental well-being which have not been remedied.

“Termination of parental rights under Section 2511(a)(5) requires that: (1) the child has been removed from parental care for at least six months; (2) the conditions which led to removal and placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child.” *In re: K.J.*, 936 A.2d 1128, 1134 (Pa. Super. 2007).

Similarly, to terminate parental rights pursuant to 23 Pa.C.S.A. §2511(a)(8), the following factors must be demonstrated: “(1) [t]he child has been removed from parental care for 12 months or more from the date of removal; (2) the conditions which led to the removal or placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child.” *In re: Adoption of M.E.P.*, 825 A.2d 1266, 1275-76 (Pa. Super. 2003); *see also* 23 Pa.C.S.A. §2511(a)(8). “Section 2511(a)(8) sets a 12-month time frame for a parent to remedy the conditions that led to the children’s removal by the court.” *In re: A.R.*, 837 A.2d 560, 564 (Pa. Super. 2003). After the 12-month period has been established, the Court must next determine whether the conditions necessitating placement persist, despite the reasonable good faith efforts that the agency supplied over a realistic time period. *Id.* In terminating parental rights under Section 2511(a)(8), the trial court is not required to evaluate a parent’s current “willingness or ability to remedy the conditions that initially caused placement”. *In re: Adoption of T.B.B.*, 835 A.2d at 396 (Pa. Super. 2003); *In re: Adoption of M.E.P.*, 825 A.2d at 1276.

In the present case, ED was removed from her parents’ care for approximately six months from April, 2011, to October, 2011. She was returned to her parents’ care for

three months from October, 2011, through January, 2012. From January, 2012, to the date of the hearing (16 months), ED has been removed from her parents' care. PD was removed from her parents' care on August 10, 2012, and at the time of the hearing had been removed from their care for approximately 10 months.

Both ED and PD have been removed from their parents' care for at least six months as of the time of the hearing on the Petition to Involuntary Terminate their parents' parental rights. ED has been removed from her parental care in excess of twelve months or more. PD has only been removed from her parents' care for ten months. It is clear that the conditions which led to the removal of the children from their parents continues to exist. Though there are multiple reasons why the children were removed, the primary reason was due to deplorable and unsafe home conditions. Throughout the entire time that the children have been removed from the parents' home, the parents have continued to exhibit inconsistencies in regard to maintaining a safe and acceptable home for the children. Throughout the time that the children have been removed, the parents have never been able to stabilize their home conditions for any significant period of time. It is significant that the parents have never been able to demonstrate any long-term lasting changes in their lives to benefit the children. At the time of the review hearing held just one month prior to the hearing to involuntarily terminate Mother's parental rights, the Court found that there was no way to determine whether or not Mother was able to maintain a clean and safe home in light of the fact that she had just recently moved into a new residence. It also clearly seems to be a pattern with the parents that once they move into a new residence, they are able to maintain somewhat acceptable

home conditions for some period of time. At the time of the last review hearing held one month prior to the hearing to involuntarily terminate Father's parental rights, the Agency had still been unable to view Father's home despite the fact that at one point, a caseworker was right outside of his residence and Father denied access. The Court can only ascertain from this that Father knew his home was not in a condition suitable for the caseworker. It is clear from the history of the case and the testimony presented that the Agency has taken significant steps to attempt to help the parents rectify the situation which led to their children being placed. The Court shares in the frustration expressed by the Caseworker, CM, as there has been significant attempts by all parties involved to get the parents to simply reach a point in their lives where they are able to maintain a safe and adequate home for their children. For whatever reason, these parents have been unable or unwilling to demonstrate the ability to do so.

ED and PD have been in the care of their paternal aunt and uncle for a significant period of time. It is clear from the testimony of Bruce Anderson that the aunt and uncle have provided security, stability, safety, and love to the children. Mother and Father have failed to provide for both of the children's needs and welfare during this time. It is clear that the termination of the parents' parental rights would be served the needs and welfare of both children.

The Court finds by clear and convincing evidence the Agency has fulfilled 23 Pa.C.S. §2511(a)(5) and (8) as to ED. The Court further finds by clear and convincing evidence the Agency has fulfilled 23 Pa.C.S. §2511(a)(8) as to PD. The Court cannot find

by clear and convincing evidence the Agency has fulfilled 23 Pa.C.S. §2511(a)(5) in regard to PD as she has not been removed from her parents' care for twelve months.

As the statutory grounds for termination have been met, the Court must also consider the following:

“23 Pa.C.S. §2511(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 condition described therein which are first initiated subsequent to the giving of notice of the filing of the petition.”

The Court must also take into account whether a bond exists between the child and parent, and whether termination would destroy an existing, necessary and beneficial relationship. *In the Interest of C.S.*, supra at 1242. When conducting a bonding analysis, the Court is not required to use expert testimony. *In Re: K.K.R.-S.*, 958 A.2d 529, 533 (Pa. Super. 2008), (citing *In Re: I.A.C.*, 897 A.2d 1200, 1208-1209 (Pa. Super. 2006)). “Above all else . . . adequate consideration must be given to the needs and welfare of the child.” *In Re: J.D.W.M.*, 810 A.2d 688, 690 (citing *In Re: Child M.*, 681 A.2d 793 (Pa. Super, 1996), appeal denied, 546 Pa. 697, 686 A.2d 1307 (1996)). A parent's own feelings of love and affection for a child do not prevent termination of parental rights. *In Re: L.M.*, 923 A.2d 505, 512 (Pa. Super. 2007).

“Before granting a petition to terminate parental rights, it is imperative that a trial court carefully consider the intangible dimensions of the needs and welfare of a child—the love, comfort, security and closeness—entailed in a parent-child relationship, as well as the tangible dimensions. Continuity of a relationship is also important to a child, for whom severance of close parental ties is usually extremely painful. The trial court, in considering what situation would best serve

the child's needs and welfare, must resume the status of the natural parental bond to consider whether terminating the natural parent's rights would destroy something in existence that is necessary and beneficial.”

**In Re: Interest of C.S.**, supra at 1202 (citations omitted).

As Bruce Anderson testified, there is a bond which exists between both parents and the children. The parents have maintained regular contact with the children through visitations. The Court, however, cannot find that the bond which exists is beneficial to the children. It is the Court's position that the bond is, in fact, detrimental to the well-being of the children. Though the parents have continued to have contact with the children while in placement, all of the children's developmental, physical and emotional needs have been met by the resource parents. The Court further does not find that the parents will ever be able to develop a positive bond with their children in light of their inability to provide a consistent safe and stable life for the children. The bond the children have with the parents as a result of maintaining contact is not the type of circular bond which is present between a child and parent where a child's needs are appropriately met and responded to. The resource parents, however, fulfill this bond for both children. The Court does not find that terminating Mother's and Father's parental rights would destroy a relationship that is necessary and beneficial to ED and PD.

**Conclusions of Law**

1. The Court finds that the Agency has established by clear and convincing evidence that AL's and DD's parental rights should be involuntarily terminated in regard to ED pursuant to 23 Pa.C.S. §2511(a)(1, 2, 5 and 8).

2. The Court finds that the Agency has established by clear and convincing evidence that AL's and DD's parental rights should be involuntarily terminated in regard to PD pursuant to 23 Pa.C.S. §2511(a)(1, 2 and 5).

3. The Court finds that the Agency has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of PD and ED will best be served by termination of AL's and DD's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy

Reynolds McCoy, Judge

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA  
ORPHANS' COURT DIVISION**

**IN RE:** : **NO. 6353**  
:   
**PD, and** :   
**ED,** :   
**minor children,** :

**DECREE**

**AND NOW**, this 30<sup>th</sup> day of **August, 2013**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of AL and DD, held on June 4 and June 5, 2013, it is hereby ORDERED and DECREED:

- (1) That the parental rights of AL and DD be, and hereby are, terminated as to the children above-named;
- (2) That the welfare of the children will be promoted by adoption; that all requirements of the Adoption Act have been met; that the children may be the subject of adoption proceedings without any further notice to the natural mother and father.

**NOTICE TO NATURAL PARENTS**  
**PENNSYLVANIA ADOPTION MEDICAL HISTORY REGISTRY**

This is to inform you about an adoption law provision relating to medical history information. As the birth parent of a Pennsylvania born child who is being, or was ever adopted in the past, you have the opportunity to voluntarily place on file medical history information. The information which you choose to provide could be important to this child's present and future medical care needs.

The law makes it possible for you to file current medical information, but it also allows you to update the information as new medically related information becomes available. Requests to release the information will be honored if the request is submitted by a birth child 18 years of age or older. The law also permits that the court honor requests for information submitted by the adoptive parents or legal guardians of adoptees who are not yet 18 years of age. All information will be maintained and distributed in a manner that fully protects your right to privacy.

You may obtain the appropriate form for you to file medical history information by contacting the Adoption Medical History Registry. Registry staff are available to answer your questions. Please contact them at:

Department of Public Welfare  
Pennsylvania Adoption Information Registry  
P.O. Box 4379  
Harrisburg, PA 17111  
Telephone: 1-800-227-0225

Medical history information forms may also be obtained locally by contacting one of the following agencies:

1. County Children & Youth Social Service Agency
2. Any private licensed adoption agency
3. Register & Recorder's Office
4. Online at [www.adoptpakids.org/Forms.aspx](http://www.adoptpakids.org/Forms.aspx) .

By the Court,

Joy

Reynolds McCoy, Judge