

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

IN RE: : **NO. 6520**
: :
HG : :
JG, : :
: :
Minor children : :

OPINION AND ORDER

AND NOW, this 20th day of **October, 2016**, before the Court is Lycoming County Children & Youth Services' ("Agency") Petition for Involuntary Termination of Parental Rights of KD ("Mother"), and PG ("Father"), filed on September 12, 2016. A hearing on the Petition to Involuntary Terminate Mother's and Father's Parental Rights was held on October 6, 2016. John Pietrovito, Esquire, Solicitor for the Agency, Ravi Marfatia, Esquire, counsel for Mother, Trisha Hoover Jasper, Esquire, counsel for Father, and Angela Lovecchio, Esquire, Guardian Ad Litem, were present at the hearing. Father appeared via telephone, although the record reflects that there were periods of time where he was disconnected. Mother, though provided notice of the time, date, and location of the hearing, failed to appear.

Findings of Facts

HG ("HG") was born May 24, 2007. JG ("JG") was born October 31, 2008. They are the children of KD, date of birth May 19, 1980, and PG, date of birth July 14, 1974.

The family has a history of transient housing and instability dating back to March, 2014. Lycoming County Children & Youth Agency ("Agency") conducted three

assessments with the family, including In-Home services in 2014-2015. HG missed 54 days of school during kindergarten and 21 excused and 15 unexcused absences during first grade. JG missed 19.5 days excused and 8.5 days unexcused days during kindergarten. Outreach Services were in place to assist Mother in her search for stable housing and employment. School Outreach Services have been involved with the family to assist in increasing school attendance and providing support to Mother and the children.

On July 29, 2015, the Agency received a referral regarding Mother being homeless. The Agency helped her obtain housing at Saving Grace Shelter, but she was discharged from the shelter due to testing positive on a drug screen. Mother does not qualify for subsidized housing due to her prior criminal history and, at the time of placement, her income was derived from limited employment and cash assistance in the amount of \$524 per month, which limited her housing options.

A referral was made to Outreach Services on August 5, 2015. The Outreach goals consisted of budgeting, housing, and employment. Since the referral, Mother attended 7 out of 22 scheduled appointments with her Outreach caseworker. She no-showed for seven appointments and cancelled/rescheduled eight appointments. The Outreach caseworker reviewed the goals at every appointment Mother attended, but testified that Mother made no real progress towards any of the goals. Father made no contact with the Outreach worker at any time during the pendency of this action.

On September 6, 2015, Mother voluntarily placed the children in the Agency's custody. Dependency Petitions were filed on September 18, 2015. On October 6, 2015, the Master recommended that the children be found, by clear and convincing evidence, to be without proper care or control, subsistence, education as required by law, or other care or control necessary for their physical, mental, or emotional health, or morals. Legal and physical custody of the children remained in the custody of the Agency and the children were to remain in foster care. On October 9, 2015, the children began residing in the home of maternal grandfather, DD, and his wife, LRD. In order for Mother to regain custody, the Master found that she needed to obtain stable housing for the children, and that she be compliant in helping identify any drug addiction issues and be open to treatment, if appropriate. Mother was also notified that she needed to regularly attend visits with the children, as well as any medical and dental appointments for them.

Mother was initially granted "unsupervised" visits with the children, meaning that the visits began and ended at the Family Support Center but Mother was free to take the children into the community during her periods of visitation on Monday – Thursday from 4:00 p.m. to 6:00 p.m. On October 1, 2015, due to concerns about Mother's ability to control and safely supervise the children in the community, the visits were changed to "observed" and Mother had to remain at the Family Support Center for the duration of the visits. After the children were placed in the care of the paternal grandfather and step-grandmother, the children would arrive to the visits by 3:45 p.m., but Mother never took advantage of the extra time.

Mother had a screening at West Branch Drug and Alcohol on November 5, 2015. She failed to attend a scheduled assessment on November 6, 2015. Mother was also scheduled in November of 2015 for an intake at Diakon for individual counseling and she failed to attend that appointment as well.

An initial permanency review hearing was held on January 12, 2016, at which time the Court found that placement of the children continued to be necessary and appropriate. The Court further found that there was no compliance with the Child Permanency Plan by Mother, in that she did not obtain housing, had minimal contact with the children, and was not complying with any Agency services, and that there had been minimal progress toward alleviating the circumstances which necessitated the original placement. The Court found that there was no compliance with the Child Permanency Plan by Father, in that he had no contact with the Agency during the review period, and consequently, there had been no progress toward alleviating the circumstances which necessitated the original placement. The current placement goal for the children was return to parent with a concurrent placement plan of adoption. During the hearing, the Court emphasized to Mother the importance of working closely with her caseworker and her Outreach worker and encouraged her to take advantage of the invaluable services they provide. On January 29, 2016, the Court entered a supplemental Order to the Initial Permanency Review Order indicating that at the time of the Review Hearing, the GAL requested that Mother undergo a drug test. The Lycoming

County Adult Probation Office performed a urine drug test on Mother, to which Mother tested positive for cocaine, opiates, and oxy.

On April 8, 2016, a Permanency Review Hearing was held before the Family Court Hearing Officer. Neither Mother nor Father attended the hearing, although both received notice. At the Review Hearing, the Hearing Officer found that the placement of the children continued to be necessary and appropriate. Mother had minimally complied with the Child Permanency Plan and remained without stable housing and employment. The Outreach worker was only able to meet with Mother once during the review period, due to difficulty in contacting Mother, and Mother cancelling appointments. Mother attended only two out of six visits with her Caseworker, cancelling one of the visits and no-showing the other three. Mother had not completed an evaluation at West Branch Drug and Alcohol Abuse Commission. The Hearing Officer found that Father had been located during the review period and had contacted the Agency twice and the children once, but was unable to have the children reside with him. The Hearing Officer found, and the Court confirmed, that there had been no progress by either Mother or Father toward alleviating the circumstances which necessitated the original placement.

During the review period, Mother attended only 16 out of 49 available visits with the children. Consequently, her visits were reduced from 4 days per week to 2 days per week. The Court ordered that if Mother utilized her visits, she could request additional visits and, if the Agency was unable to accommodate the request, she could file a petition with the Court which would be heard on an expedited basis.

A Permanency Review Hearing was held on August 16, 2016. Mother attended in person and Father attended by telephone. The Court found that placement of the children continued to be necessary and appropriate. Mother had minimal compliance with the Child Permanency Plan in that she did not obtain stable housing, only met with her Outreach worker one time, and was inconsistent in her visits with the children. Mother did complete her drug and alcohol evaluation during this review period and followed through with the recommended inpatient treatment, successfully completing an inpatient rehabilitation program from April 23, 2016, to May 19, 2016. Upon her release, Mother was scheduled for an intake at Genesis House on May 23, 2016, for outpatient drug and alcohol counseling. She rescheduled the appointment to May 25, 2016, but failed to attend and therefore she received no formal drug and alcohol services during the review period. Mother testified that she believed what works best for her is to participate in NA/AA and work with a sponsor, and while the Court indicated that it understood that treatment is individualized, Mother was encouraged to keep the Agency apprised through as many means as possible as to exactly what she is doing to maintain her sobriety so that her progress could be documented.

Mother's attendance at the scheduled visitation was inconsistent during the review period. Some of the inconsistencies could be attributed to Mother's short-term employment and her time in rehab, but the Court noted that when Mother misses visits, it has a detrimental effect on the children. The Court granted the Agency the discretion to reduce Mother's visits if Mother continued to miss them for reasons which were not

appropriate, and if the Agency believed it was in the best interest of the children in order to limit the difficulty that the children experienced when they know a visit was to occur and Mother failed to attend.

As Father resided in a halfway house during the review period, he was encouraged to maintain regular contact with the Agency and to keep them informed of any changes in his living status. Father was advised that if he is in a position where he is able to visit with the children, he should contact the Agency immediately to make those arrangements. Father was provided with a telephone number where he could contact the children. Overall, the Court found that Father had no compliance with the Child Permanency Plan in that he was living in a halfway house, had infrequent contact with the Agency, and had only written to the children one time during the review period. The Court found that there had been no progress on the part of either parent toward alleviating the circumstances which necessitated the original placement.

On September 12, 2016, a Petition for the Involuntary Termination of Parental Rights of Mother and Father with regard to HG and JG was filed by the Agency, averring (1) that the termination of parental rights will benefit the children's developmental and emotional needs in that their needs would be best met in a predictable and stable home where they feel safe physically and emotionally, and (2) that termination of parental rights is in the best interest of the children and would promote their needs and welfare. Also on September 12, 2016, a Petition for Permanency Hearing and Change of Goal was filed on behalf of each child. A pretrial

conference was held on September 27, 2016. No settlement agreement could be reached as there did not appear to be a viable resource home that was suitable to all parties and both parents indicated strong opposition to the termination proceeding. Both parents were provided with notice of the time, date, and location of the termination hearing.

On October 6, 2016, a hearing was held in regard to the Petition for the Involuntary Termination of Parental Rights, as well as a Permanency Review Hearing. Mother, despite receiving notice from her counsel and the Agency, did not attend the hearing. Father participated by telephone, although there were portions of the hearing where he was unavailable due to being disconnected. The Agency did offer bus tokens to Father so that he could attend in person, as was highly encouraged by the Court at the pretrial conference, but Father did not avail himself of the offer.

Rhonda Jennings, Assistant Director at Saving Grace Homeless Shelter for the American Rescue Workers, testified that Mother initially came in September, 2014, with her four children and was there for almost a full 30 days before finding a place to stay. Mother returned with all four children in September, 2015, but was asked to leave when a drug test they administered had a positive result. Mother again returned in June of 2016, without any children, and remained for about a week. Ms. Jennings testified that she did not administer any drug tests during the last stay because Mother never appeared to be under the influence and reported that she had a sponsor and was attending meetings every day while she was at the shelter.

Steve Salvatori, intake worker/counselor at Genesis House, an outpatient drug and alcohol counseling center, testified that he received a referral from Pyramid Health on May 12, 2016, and that he scheduled an intake appointment for Mother for May 23, 2016, through the Pyramid Health contact. Mother called on May 23, 2016, to reschedule the intake to May 25, 2016, but Mother failed to attend the appointment, and made no further attempts to reschedule her intake for the outpatient drug and alcohol services that were recommended upon her release from her rehab program.

Tammy Bradley, Mother's Outreach caseworker, testified that she received the referral in August of 2015, and her first visit with Mother was on August 13, 2015, at which time they discussed the goals of budgeting, housing, day care, and employment. Ms. Bradley testified that Mother could have met with her on a weekly basis, but that she only met with her for seven scheduled visits. Ms. Bradley also met with Mother for nine unscheduled visits, usually popping in to see her during her visitation with the children. Ms. Bradley testified that they had to review the goals every time she met with Mother because so much time passed between their meetings it was like starting over each time. Ms. Bradley testified that Mother made essentially no progress towards the goals they discussed at their initial meeting. Ms. Bradley testified that she had no contact with Father in her capacity as an Outreach worker.

Karen Schooley, the Visitation Coordinator, testified that Mother initially had visits scheduled four times per week for two hours. The children often arrived early, and Mother was offered the extra time but never took advantage of it. Ms. Schooley testified

that Mother was inconsistent with her visits and periods of good attendance were often followed by periods of cancellations and no-shows. Her visits were reduced to 2 times per week in April, 2016, by Court Order due to the inconsistency and its detrimental effect on the children. Ms. Schooley testified that both boys present challenging behaviors and that she discussed with Mother the fact that the visits would go better if she implemented some structure and planned some activities but Mother was never consistent in following through with the suggestions. Ms. Schooley testified that the boys' behavior often led to a lot of chaos and disruption at the visits, and that Mother did not really engage the children. Ms. Schooley also testified that there were numerous occasions where the visitation staff was concerned that Mother may have been under the influence of drugs and/or alcohol, including days where mother nodded off or fell asleep, and days where mother made frequent trips – as many as nine trips in two hours – to the bathroom, and that Mother often talked to the children about adult topics such as her housing and employment situation. On September 7, 2016, Mother's visits were further reduced to 1 time per week. Overall, Mother had 159 visits available. She attended 69 visits, no-showed 77, cancelled 13, and was unavailable for 8 while she was in rehab. Ms. Schooley testified that Father did not attend any of the visits, nor had he contacted her to arrange any visitation with the children.

Jaclyn Hummer, the ongoing Caseworker assigned to the case in October, 2015, after the children were adjudicated delinquent, testified about the Agency's extensive efforts to contact Father, dating back to April 7, 2014, when a letter was sent to him

about the referral regarding the children because of the truancy issues. Ms. Hummer sent Father numerous letters to update him on the Agency's involvement with the children. Father was provided with self-addressed stamped envelopes to write to the children and the Agency, and each letter to Father contained the telephone numbers for the Agency and the Caseworker. By letter dated August 15, 2016, Father was provided with the name and telephone number of the new resource parents and encouraged to contact the children by phone or mail on a weekly basis. Father has not actually seen the children since approximately May of 2009. Since they have been in placement, Father has made one telephone call and written to the children one time. His contact with the Agency has also been minimal, due in part to the fact that he is currently in a supportive living substance abuse treatment house and, prior to that, he resided in a halfway house and an inpatient rehabilitation facility.

Ms. Hummer testified that since the children have been in placement, Mother has had seven places that she was staying, and that it was difficult to contact her by mail or telephone. Often, Ms. Hummer had to stop down to see Mother while she was visiting with the children. Out of 25 scheduled contacts, Mother attended 8 of them, cancelled 5, and no-showed 12. She testified that Mother made very little progress on the issues confronting her. Mother did not secure stable housing, did not follow through with recommendations for drug and alcohol counseling, never provided proof of employment, and attended only two pediatric dental appointments for the children.

Bruce Anderson, Licensed Psychologist, conducted several evaluations on the children. His most recent meeting with Mother and the children was in August of 2016, shortly before the Agency filed its termination petition. The purpose of the evaluation was to look at permanency options and their impact on the children, as well as to determine the level and type of bond the children have with Mother. Mr. Anderson indicated it was clear that Mother and children love and care for each other very much, but he was very concerned about Mother's stability and her need to maintain sobriety, find appropriate housing and employment, and attend visits. Mr. Anderson opined that if Mother's rights were terminated, the children would be hurt and there would be a grieving process, but the fact that they had been out of Mother's direct care for nearly three years may lessen the pain. Mr. Anderson testified that the need for a permanent home situation overrides the pain/grief that the children will feel if Mother's 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 Mother's and Father's parental rights, the Agency must prove by clear and convincing evidence one of the above subsections of 23 Pa.C.S.A. §2511(a).

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: B.N.M., 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 Mother’s parental rights, Mother has failed to perform parental duties on behalf of the children. Mother has only visited the children sporadically during the time the children have been in placement. She failed to take advantage of the extra time offered when the visits were scheduled for four days per week. Her lack of consistent participation resulted in the Court reducing her visits to two days per week in April of 2016, and the Agency further reduced the visits to one time per week in September, 2016. The children had several physicals and dental appointments while they have been in placement, and Mother managed to attend only two. Mother has done almost nothing to perform parental duties on behalf of the children and has been largely uncooperative with the Agency. Perhaps the most telltale evidence that Mother has failed to perform her parental duties is the fact that Mother, despite receiving proper notice, could not be bothered to be present at the hearing which would determine whether her parental rights would be terminated. The Court hereby finds by clear and convincing evidence that the Agency has fulfilled the requirements of 23 Pa.C.S.A. §2511(a)(1) in that Mother has failed to perform her parental duties for at least six months prior to the filing of the termination petition.

With regard to Father, the Court finds that for a period of at least six months prior to the Agency’s filing the Petition to Terminate Father’s Parental Rights, Father has both

evidenced a settled purpose of relinquishing parental claim to his child and has refused and failed to perform parental duties. Throughout the timeframe of this case, Father has failed to participate with the Agency in any meaningful manner. Father never contacted the Agency to arrange for visitation with the children, despite the Caseworker encouraging him to do so every time she mailed him a status update. Father admitted that the last time he had face-to-face contact with the children was approximately May, 2009. Father never sent the children gifts or cards for their birthdays or holidays. Father's contact with the children while they were in placement was limited to one letter and one phone call. The Court hereby finds by clear and convincing evidence that the Agency has fulfilled the requirements of 23 Pa.C.S.A. §2511(a)(1) in that Father has evidenced a settled purpose of relinquishing his parental claims to his child and has refused and failed to perform parental duties on behalf of the child for at least a six month period prior to the filing of the termination petition.

To satisfy the requirements of Section 2511(a)(2), the Agency must demonstrate that the Mother and 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.

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).

Mother’s actions, or lack thereof, could be considered repeated incapacity and/or refusal to act resulting in the children being without essential parental care, control or subsistence necessary for their physical or mental well-being. Mother has failed to perform parental duties on behalf of her child. Mother’s sporadic visits with the children are insufficient to overcome her duty to perform parental duties. Mother has, in no way, shown that she was willing to make diligent efforts towards the reasonable prompt assumption of full parental responsibilities. Mother stayed at as many as seven different residences/shelters while the children were in placement, making it difficult for her Caseworker and her Outreach worker to contact her. Mother was unable to secure stable housing that would be suitable for herself and the children. Mother refused to be open to any type of formal drug and alcohol counseling upon completion of her inpatient

rehabilitation. Essentially, Mother made very little progress towards alleviating the circumstances which necessitated the original placement of the children.

Father is currently residing in a supportive living home. Prior to that he was in a halfway house, and prior to that he was in an inpatient rehabilitation facility. He testified that he has struggled with a heroin addiction for the better part of ten years. While Father has indicated that he is working on his life, he testified that it will be at least several more months before he gets his own apartment that would be suitable for visitation with the children. In light of the very limited contact that Father has had with the children both prior to and after placement, the Court is not convinced that his repeated incapacity and neglect can and will be remedied to the point where he is able to provide the children with essential parental control or subsistence necessary for their well-being.

The Court finds by clear and convincing evidence that the Agency has fulfilled 23 Pa.C.S.A. §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 and refusal has caused the child to without essential parental control or subsistence necessary for her physical and mental well-being.

"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, the children have been in placement since September 6, 2015, when Mother voluntarily placed them with the Agency due to lack of housing. The children were declared dependent on October 6, 2015. The

Petition for Involuntary Termination of Parental Rights was filed on September 12, 2016. As of the date of the filing of the Petition, the children had been in care approximately 12 months and dependent for 11 months. The issues which initially led to the placement/removal of the children from Mother's care still exist, as she has been unable to obtain and maintain suitable housing or employment and has demonstrated a lack of follow-through regarding continued treatment for her drug abuse issues. Father, by his failure to perform parental duties for most of the children's lives, and his current living situation, is not a suitable caregiver for the children.

Mother has cooperated on a fairly limited basis with the Agency, and has done very little to work towards reunification with her children through the Agency. At the present time, the Court holds very little confidence in Mother that she will, in the future, cooperate with the Agency to maintain stable housing and employment and maintain consistent contact with the children. Additionally, the Court has significant concerns that Mother will continue to struggle with addiction issues and not be open to formal out-patient treatment and counseling.

However, Mother did successfully complete an inpatient rehabilitation program, and the Agency offered no evidence that Mother was not able to maintain her sobriety despite not following through with after-care recommendations.

The Court finds by clear and convincing evidence that the Agency has fulfilled the first two factors of each of 23 Pa.C.S.A. §2511(a)(5) and (8) as the

children have been removed from Mother's and Father's care for 12 months, and that the conditions which led to the original removal of the child still continue to exist to date. The Court cannot at this time find by clear and convincing evidence, at least on behalf of Mother, that the termination of her parental rights would best serve the needs and welfare of the children. Currently, the children are residing with CW and her friend, SM, in a foster-to-adopt home through Families United. The children have made progress while in the care of these women, but they still present significant behavioral challenges, particularly JG. There is no firm commitment on the part of the resource parents to adopt the children, as they wish to wait and see if the behavioral issues improve before making a decision. These children deserve stability in their lives. They deserve to know they are loved, to know that they will go to sleep in the same place every night, and to know that they will have a support system. If the Court terminates the parental rights of Mother and Father without an immediate and guaranteed permanent option available to the children, the termination would not best serve the needs and welfare of the children.

As the Court has found that statutory grounds for termination have been met under at least one of the four subsections of 23 Pa. C.S.A. §2511(a) contained in the Petition to Involuntarily Terminate Parental Rights, the Court must now 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 conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

The Court must 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 1202. 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. 674, 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* dimension 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 dimension. Continuity of relationships 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 children’s needs and welfare, must

examine the status of the natural parental bond to consider whether terminating the natural parents' rights would destroy something in existence that is necessary and beneficial.

In the Interest of C.S., supra., at 1202 (citations omitted).

Whether termination of Mother's parental rights would destroy an existing, necessary and beneficial relationship is very complicated for the Court to determine. Bruce Anderson, M.A., Licensed Psychologist, performed a bonding evaluation on HG and JG on August 15, 2016, to assist the Agency in case planning. Mr. Anderson noted that the foster mother indicated that the children often reacted poorly to the fact that Mother frequently missed visitation time with them. The report indicated, and Mr. Anderson later testified, that the boys were very comfortable with Mother, and they both stated that they wanted to return to Mother's home on a permanent basis. The children seem to genuinely love and care for Mother and she, in turn, appears to love and care for them. Mother made it clear to Mr. Anderson that she was eager to have the children home with her, and that in order for that to happen, she must obtain employment, find suitable housing, follow through with drug and alcohol counseling, and attend all visits with the children. Mother acknowledged that her life had been chaotic and that it has had a negative impact on the children.

In his evaluation and through his testimony, Mr. Anderson noted that, should Mother's parental rights be terminated, the children will experience a period of mourning and sadness. However, he felt that they should be able to recover emotionally from that *as long as they are living in a stable and loving home environment*. While the children

appear to be adjusting well in their current resource home, and the resource parents are working on getting the children more active and involved in therapies and services to control their behavior, they have not fully committed at this time to adopting the children. This Court has serious concerns about terminating Mother's parental rights when there is no permanent option for the children to be transitioned into immediately.

Additionally, this Court questions whether the Agency acted prematurely in filing the Petition to Terminate Mother's parental rights, in light of the fact that the children have been in placement only 12 months and there is no permanent placement for them at this time. The Caseworker testified that the children have been in care for one year and Mother has made no progress towards alleviating the circumstances which necessitated the original placement. The GAL questioned Mr. Anderson about whether there was a harm in waiting to terminate Mother's rights and letting the children stay where they are for the time being. Mr. Anderson testified that their current situation places the children in limbo and that they "deserve to be in a permanent home" and that he wants them to "be able to attach to somebody that they know they can depend on for a long time." At this time, that person may not be Mother, but it also may not be the current resource parents, as there was testimony that they are not sure that they will be willing and/or able to adopt the children if the behavioral issues cannot be resolved. And while Mother has made relatively little progress towards her goals, it is evident that she and the children still have a bond and that the children still love her and want to live with her.

At this time, the Court declines to find that the developmental, physical and emotional needs and welfare of the children would best be served by terminating Mother's parental rights, in light of the fact that there is no definitive permanent option for the children. However, the children deserve to have a loving, safe, and permanent home, and Mother is strongly cautioned that she must work very hard to comply with the Agency's directives regarding obtaining housing, stable employment, drug and alcohol counseling. Most importantly, however, Mother must attend all scheduled visits, and, after establishing a good record of attendance, request and attend additional visits with the children in order to maintain and promote the necessary and beneficial bond that currently exists.

With regard to Father, given that he has had very little interaction or involvement with the children over the course of their lives, there is not a significant bond between Father and the children. Caseworker Jaclyn Hummer testified that when Father did call the children in February of 2016, HG spoke to him but it felt "awkward," and JG did not speak to Father. Termination of Father's rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and the children. Although the Agency has established by clear and convincing evidence that termination of Father's parental rights will not destroy something in existence that is necessary and beneficial, the Court declines to terminate Father's parental rights unless and until such time that Mother's parental rights are terminated.

Conclusions of Law

1. The Court finds that the Agency has established by clear and convincing evidence that KD and PG, by conduct continuing for a period of at least six months immediately preceding the filing of the petition have refused or failed to perform parental duties pursuant to 23 Pa.C.S. §2511(a)(1) .

2. The Court finds that the Agency has established by clear and convincing evidence that KD and PG, have exhibited repeated and continued incapacity, abuse, neglect or refusal which has caused the children to be without essential parental care, control or subsistence necessary for their physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by them pursuant to 23 Pa.C.S. §2511(a)(2).

3. The Court finds that, with regard to PG, the Agency has established by clear and convincing evidence all of the factors enumerated in 23 Pa.C.S. §2511(a) (5) and (8).

4. The Court finds that, with regard to KD, the Agency has established by clear and convincing evidence the first two factors enumerated in 23 Pa.C.S. §2511(a) (5) and (8), but has not established by clear and convincing evidence that termination of her parental rights would best serve the needs and welfare of the children *at this time*.

5. The Court finds that the Agency has established by clear and convincing evidence that no bond exists between PG and the children and that there would be no detriment to the developmental, physical and emotional needs and welfare of HG and JG by the termination of his parental rights; however, the Court declines to terminate said parental rights of PG unless and until the parental rights of KD are also terminated.

6. The Court finds that the currently still exists a necessary and beneficial bond between KD and the children and that Agency has not established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of HG and JG will best be served by termination of KD's parental rights at this time.

By the Court,

Joy Reynolds McCoy, Judge