

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

IN RE: : NO. 6597  
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AD1, AD2 and AB, :  
: :  
minor children :  
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OPINION

Before the Court is the Petition for Involuntary Termination of Parental Rights filed by Lycoming County Children & Youth (“the Agency”) on April 13, 2018, in which the Agency seeks to terminate the parental rights of DD (“Father”) with respect to his three children, AD1, AD2 and AB.<sup>1</sup> A hearing on the petition was held on June 4 and 5, 2018. Father was present and was represented by Julian Allatt, Esquire. Also present were John Pietrovito, Esquire, counsel for the Agency, and Angela Lovecchio, Esquire, counsel for the children.

Findings of Fact

AD1 was born on June 19, 2012, AD2 was born on March 27, 2016 and AB was born on March 13, 2017. They are the children of AB (“Mother”)<sup>2</sup>, date of birth February 24, 1994, and DD (“Father”), date of birth August 19, 1992.

This case originated with the filing of an Application for Emergency Protective Custody on March 7, 2017, following which the two older children<sup>3</sup> were placed in foster care, as a result of Mother’s becoming incarcerated. Father had been incarcerated since prior to that time, and

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<sup>1</sup> Mother signed a voluntary consent to adoption prior to the date of the hearing.

<sup>2</sup> Inasmuch as both AB (child) and AB (Mother) have the same initials, hereinafter the Court will refer to the child as “AB” and Mother as “Mother”.

<sup>3</sup> AB was not yet born.

was not a resource for the children. After a hearing on March 8, 2017, even though Mother had been released from incarceration, the children were placed in the physical custody of their maternal grandmother.

A Dependency Petition was filed on March 9, 2017, and a hearing on the petition was scheduled for March 31, 2017. In the interim, AB was born on March 13, 2017 and was placed in the emergency protective custody of the Agency by Order of that date. AB was not placed with the maternal grandmother but instead in a foster home.

After the dependency hearing on March 31, 2017, the Court found, by clear and convincing evidence, that the two older children were dependent children pursuant to 42 Pa.C.S. §6302, and were 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. The children were continued in their maternal grandmother's custody. Also held that date was a shelter care hearing for AB, and AB was continued in foster care. At the time of the hearings, Father was incarcerated in the Luzerne County Prison.

A Dependency Petition with respect to AB was filed on April 3, 2017, and after a hearing on April 6, 2017, AB was also found to be a dependent child and was continued in foster care. Father remained incarcerated at the Luzerne County Prison at the time of that hearing.

On April 12, 2017 the maternal grandmother voluntarily placed AD1 and AD2 in Agency care, and they were placed in a foster home. Following an uncontested petition for modification and Order dated April 17, 2017, AB was transferred to the same foster home.

A permanency review hearing was held on May 23, 2017. The Court found that Father remained incarcerated and had not maintained contact with the Agency or with his attorney. He did not attend the hearing. The Court reaffirmed dependency and the children were continued in

foster care, although the Agency was directed to investigate alternate placement with an African American foster home. The goal remained return to a parent or guardian.

A second permanency review hearing was held on July 11, 2017. At that time, Father remained incarcerated, but had been transferred to SCI - Benner. It was noted that Father had been in contact with the Agency and was directed to keep them apprised of his status, as he expected to be released in the near future. It was also noted that Father had been in contact with his children during the review period. The Court reaffirmed dependency and the children were continued in foster care. The goal remained return to a parent or guardian, and Father was advised that upon his release, the Agency would investigate placing the children with him in his mother's home in Philadelphia.

On July 21, 2017, Crystal Minnier, the caseworker assigned at the time, sent Father a letter to provide an update on the children's status. She advised him that although the children were doing well medically, AD1 was experiencing behavioral issues and it was felt he might have ADHD. Father was advised that AD1 had been prescribed medication and evaluated for mobile therapy. Ms. Minnier also relayed concerns about AD1's statement at the last hearing to Father (who appeared by way of video conference),<sup>4</sup> expressing concern that AD1 had become more aggressive with the other children as he became more comfortable in the foster home. She also advised him that it was necessary for him to attempt to keep in touch with his children and with the Agency regarding their well-being. He was sent four stamped envelopes and advised to use them to write to his children, in care of the Agency. Ms. Minnier also indicated she would speak with Father's counselor about the ability to have phone calls with the children (based on his request). Father was advised that unless he regained custody of the children within 15 out of

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<sup>4</sup> According to Ms. Minnier's testimony, when AD1 saw his Father on the screen, he stated "you're the one who beat my mom".

22 months, other permanency options would be explored, and that a petition to terminate parental rights could be filed as early as six months after placement if it was deemed appropriate for the children. Father was reminded that the children had been in placement since April 12, 2017 (AB since birth on March 13, 2017) and it was suggested that he take advantage of any parenting services that were available.

On August 22, 2017, Father wrote to Ms. Minnier and expressed the opinion that AD1 did not need medication for ADHD but that his behavior was the result of his parents' absence from his life. He also expressed the belief that the children had never been present to witness any violence between him and AD1's mother, but admitted that since AD1 "said what he said", he must have "seen something". Father did enclose a letter to AD1 and promised to write the children regularly from that point on. He stated that he had applied for parenting services and that he would not be eligible for parole until November.

On September 13, 2017, Ms. Minnier again wrote to Father and expressed her concern that he was minimizing the effect the domestic violence had had on AD1. She also advised him that medication had not seemed to work to treat the suspected ADHD so it had been discontinued but he had been prescribed mobile therapy and an appointment for an evaluation for ADHD had been made with a psychiatrist. Father was again sent four stamped envelopes and advised to use them to write to his children, in care of the Agency. Ms. Minnier again indicated she would speak with Father's counselor about the ability to have phone calls with the children, and again advised Father to take advantage of any parenting services that were available. The admonition that unless he regained custody of the children within 15 out of 22 months, other permanency options would be explored, and that a petition to terminate parental rights could be filed as early as six months after placement if it was deemed appropriate for the children, was repeated.

A third permanency review hearing was held on October 19, 2017. At that time, Father remained incarcerated at SCI - Benner; it was noted that he had not had any contact with the Agency since the last review hearing in July,<sup>5</sup> although he had written letters to his children.<sup>6</sup> The Court reaffirmed dependency and the children were continued in foster care, although it was noted that AD1 was not “wanted” by the foster parents and therefore the Court directed the Agency to find a new home for all three children. The goal remained return to a parent or guardian and the Court stated: “[Father] may be the best resource for the children upon his release”, which at that time was estimated by Father to be January or February of 2018. The Court directed that visits between the children and Father should occur at the prison if such could be arranged.

On December 27, 2017, Ms. Minnier again wrote to Father to update him on the children’s status. Father was advised that his mother had contacted the Agency and asked to be a resource so that was being investigated. Father was advised that “everything is in place for the phone calls with AD1”<sup>7</sup> and that the calls had been approved to begin on November 29, 2017. Father was asked to provide information on why no call had been received from him on November 29, and was informed that, as he was already aware, the next three calls could not take place as AD1 had been in the hospital with an unexplained rash. He was informed that the next scheduled call was January 3, 2018. Father was advised that visitation arrangements were being worked on, but that it was “a lengthy process”. He was advised what he needed to do on his end to arrange for visitation.<sup>8</sup> Ms. Minnier indicated she had learned from Father’s counselor that he

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<sup>5</sup> This is incorrect, as Father had written to Ms. Minnier in August.

<sup>6</sup> Apparently, this reference to “letters” meant the one letter sent by Father in August, as when questioned why he did not send more than that one letter, Father did not indicate he had written more than one letter.

<sup>7</sup> AD2 and AB were not included due to their young age.

<sup>8</sup> According to Ms. Minnier, Father did do this by placing the caseworkers and his children on his visitors list.

had been denied parole on November 28, 2017 because he needed to complete a program which took three months to complete but that there was a waiting list and that it was impossible to estimate a release date. Father was again sent four stamped envelopes and advised to use them to write to his children, in care of the Agency. Ms. Minnier also again advised Father to take advantage of any parenting services that were available, and advised him that according to his counselor, those services were indeed available and he could volunteer for such services. The admonition that unless he regained custody of the children within 15 out of 22 months, other permanency options would be explored, and that a petition to terminate parental rights could be filed as early as six months after placement if it was deemed appropriate for the children, was repeated.

A fourth permanency review hearing was held on January 16, 2018. At that time Father remained incarcerated at SCI – Benner but anticipated a release in the summer of 2018 “as soon as he completes some required programming”. It was noted that Father now had regular phone contact with the children.<sup>9</sup> As Father’s mother had requested that she be a resource, the Court directed the Agency to make a home visit to her home in Philadelphia and complete the required paperwork within the next 60 days. It was hoped by the Court that the children could be placed with the paternal grandmother by the time of the next review hearing. In the meantime, the children were to be moved to a new foster home as one had been located. Dependency was continued and the goal remained return to a parent or guardian.

On January 30, 2018, Teresa Ross, the new caseworker assigned to the case, wrote to Father to update him on the children’s status. She informed him that the children had been moved to their new foster home on January 19, 2018 and were acclimating well. She also told

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<sup>9</sup> As noted previously, the testimony was that phone contact was with AD1 only. AD2 and AB were not included due to their young age.

him that a home visit to his mother's home was planned to investigate her as a possible resource. She encouraged Father to continue calling AD1 weekly and offered to forward to the children any letters he might send to them through the Agency. She noted to him that it was "important that you maintain contact with your children to continue building a bond with them". Father was again reminded that unless he regained custody of the children within 15 out of 22 months, other permanency options would be explored.

Ms. Ross wrote to Father again on February 28, 2018. She informed him that the children were doing well in their new foster home, but that his mother had decided against taking the children as she was physically unable to do so. Updates on the children's health were provided and Father was encouraged to continue calling AD1 on a weekly basis and to write to the children. Father was informed of the next review hearing date and also that a termination pre-trial conference had been scheduled for April 30, 2018.

A fifth permanency review hearing was held on April 2, 2018. At that time, Father remained incarcerated at SCI – Benner. It was noted that he had not completed any suggested parenting class, and had been denied parole based on his failure to complete certain programming, but that he was then in the programming and anticipated completion by late June, early July, and a release soon thereafter. It was directed that Father continue to have phone contact with AD1. The Court noted that the Agency had visited the home of the paternal grandmother on February 9, 2018, but that at the visit, she had indicated an inability to be a resource for the children. Dependency was affirmed and the children were continued in foster care where they were found to be doing "generally well". Only AD1 required services at that time, and he was receiving wrap around services, speech therapy and play therapy. Although the

goal remained return to a parent or guardian, the matter had been scheduled for a termination pre-trial conference as the children had been in placement for twelve months.

On April 9, 2018, Ms. Ross again wrote to Father to let him know the children continued to do well in their foster home and that AD1 had begun play therapy. Father was again encouraged to continue his weekly phone calls with AD1 and to write letters to the children. He was again encouraged to participate in any programs he could while incarcerated. Father was reminded of the April 30, 2018 pre-trial conference and informed that a hearing on the petition for termination of parental rights had been scheduled for June 4 and 5, 2018.

On April 13, 2018, the Agency filed a Petition for Permanency Hearing and Change of Goal (to adoption), as well as the instant Petition to Terminate Parental Rights. In the Petition to Terminate Parental Rights, Father was noted to have been in and out of incarceration since 2010, and that he remained incarcerated and was thus unable to care for the children. It was also noted that he had not completed any parenting services while incarcerated and that although he had spoken on the phone with AD1 a total of ten times in weekly phone calls, he had written only one letter to the children. It was surmised that Father would not likely remedy his inability to provide for the children within a reasonable amount of time.

A pre-trial conference on the Agency's Petition for Involuntary Termination of Parental Rights was held on April 30, 2018, at which time a schedule for filing pre-trial statements and answers to the petition was established.<sup>10</sup> The Agency withdrew the petition for permanency hearing, choosing to proceed solely on the petition for change of goal and the petition for termination of parental rights.

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<sup>10</sup> Father, through his counsel, filed his Answer and Pre-Trial Memorandum on May 23, 2018.

Father called Ms. Ross on May 7, May 16, May 18 and May 30, 2018. In these calls he inquired about what he must do to have the children returned to his care upon his release, which he estimated to be in mid-July 2018. Ms. Ross informed Father that he would have to maintain a stable home, have a steady income, visit with the children at the Sharwell building at least twice a week, meet all parole requirements, complete an evaluation for domestic violence as well as a drug and alcohol evaluation, and complete parenting classes. Further, she informed him that only after he had been successful in these areas for an eight-month period, would the Agency consider increasing his visits and working toward return of the children. Ms. Ross also sent a letter dated May 11, 2018, updating him on the children's status and encouraging him to continue calling AD1 each week. She also indicated she had received one letter for AD1 and that it would be given to the foster mother to read to him. She reminded him that it was important to maintain contact with the children to the best of his ability.

Father sent two letters (including the letter just referenced) and a box of toys to the children (through the Agency), in May 2018.

According to Father's testimony, he first was arrested in 2010 (at the age of 18) on a charge of DUI and fleeing and eluding and was sentenced in January 2012 to one to six months' in County prison. He was then arrested and jailed on a charge of possession with intent to deliver cocaine<sup>11</sup> on March 30, 2012,<sup>12</sup> and thus was incarcerated at the time of AD1's birth in June 2012. Father was released on May 10, 2015, when AD1 was almost three years old. Father testified that AD1 lived with Father and Father's sister for three months in the summer of 2015<sup>13</sup>

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<sup>11</sup> This charge resulted in a probation violation but he was sentenced to concurrent time.

<sup>12</sup> Father was sentenced on this charge in December 2012 to three to six years' incarceration.

<sup>13</sup> There was contradictory testimony on this point. Father said it was in the summer of 2015 but he also said he was on house arrest at the time. His sister testified that it was in January – February 2016 and that Father was on house arrest at the time. This testimony makes more sense as Father said the house arrest was imposed by his parole

and then AD1 returned to his mother's custody. Following an incident between Father and Mother, Father was arrested on August 4, 2015 for simple assault and was incarcerated on that charge until September 22, 2015, at which time the charges were dropped. From September 2015 through August 2016, Father occasionally visited the children by traveling to Lycoming County to see Mother. Then, following a charge of unauthorized use of a motor vehicle in Luzerne County in August 2016,<sup>14</sup> Father was returned to jail on a parole violation (as well as the underlying charge) and has remained incarcerated since then. At the time, AD1 was four years old, and AD2 was about five months old. Father has never met AB, who was born in March 2017.

Father believes he will complete his current programming, attending a batterer's class, by the end of June 2018 and will be before the Parole Board in mid-July. He anticipates being released in August at the latest. His max-out date is in January 2020.

### Discussion

The Agency seeks termination of Father's parental rights under 23 Pa.C.S. §2511(a)(1) and (2):

#### §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.

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officer after his arrest and subsequent release for the simple assault involving Mother. As noted infra, Father testified that occurred in August to September 2015.

<sup>14</sup> Father testified that this charge resulted from a crash in March 2016 in which he was driving a friend's car, which turned out to be a rental car, and he was not on the rental agreement.

- (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.

In order to involuntarily terminate Father's parental rights, the Agency must prove by clear and convincing evidence the conduct set forth in either of these subsections.

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 (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, 872 A.2d 1200 (Pa. 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, emphasis added).

Further, where a parent is incarcerated,

the fact of incarceration does not, in itself, provide grounds for the termination of parental rights. However, a parent's responsibilities are not tolled during incarceration. The focus is on *whether the parent utilized resources available* while in prison to maintain a relationship with his or her child. *An incarcerated parent is expected to utilize all available resources to foster a continuing close relationship with his or her children.*

In re N. M. B., 2004 PA Super 311, P19 (Pa. Super. Ct. 2004) (internal citations omitted, emphasis added). See also, In re C.L.G., 956 A.2d 999, 1006 (Pa. Super. 2008) (“Our law is clear that we must inquire into the steps taken to “maintain” the parent-child relationship upon incarceration.”)

In the instant case, Father has been incarcerated for almost all of the children’s lives. In fact, he has never even met the youngest child due to his incarceration. He has thus been unable, and therefore has failed, to perform parental duties. Further, Father has clearly failed to utilize all available resources to maintain (or in the case of the two younger children, develop) a relationship with his children. While he has called and talked with AD1 weekly for 15 minutes since January of this year, and placed the caseworkers and his children on his visitors list to enable visitation, he has made no other effort to be a parent. Although Father was provided with envelopes on a monthly basis and encouraged to write to the children, in the first year of the children’s placement, before the Agency sought termination, Father sent only one letter, and no cards or gifts.

The Court believes Father exhibited “a merely passive interest in the development of the child[ren]”. He stated repeatedly that he loves them, and although those involved in this case agreed that he does, the Court finds that he has done nothing to show that love. His obligation is a “positive duty which requires affirmative performance”, and the Court finds that performance sorely lacking. He was perfectly capable of sending letters, and even was assisted by the monthly provision of stamped envelopes, but did not do so. He never sent a birthday or holiday card and, until the termination petition was filed, no gifts were arranged for. He had the opportunity to enroll in parenting classes in prison but still has not done so. Even financially, Father did nothing to support the children other than care for AD1 for three months<sup>15</sup> and contribute to one rent payment in the summer of 2016. He was encouraged to keep in touch with the Agency so he could be informed as to the children’s needs and progress, but only when the termination petition was filed did he take that request seriously.

The Court finds that Father was motivated by the termination petition and not by any genuine interest in the children’s welfare when he sent the gifts and two more letters in May 2018. This was explained clearly by Father when he testified that he did not send more than the one letter before the petition because he “never thought this would happen”. He was waiting for the children to be placed with a family member or with Mother, and was apparently unconcerned with developing or maintaining a relationship with them in the meantime.

While there has been no allegation that Father has evidenced a settled purpose of relinquishing his parental claim, the Court does find that he has failed to perform his parental duties for a period of at least six months immediately preceding the filing of the petition.

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<sup>15</sup> Even then, Father and AD1 lived with Father’s sister and since Father was not working, it is assumed that Father’s sister financially supported both Father and AD1.

To satisfy the requirements of Section 2511(a)(2), the Agency must demonstrate:

(1) repeated 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 ... 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.

With respect to incarceration,

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

In re Adoption of S.P., 47 A.3d 817, 830 (Pa. 2012)(emphasis added), citing Adoption of J.J., 515 A.2d 883, 891 (Pa. 1986)(“[A] parent who is incapable of performing parental duties is just as parentally unfit as one who refuses to perform the duties.”), and In re E.A.P., 944 A.2d 79, 85 Pa. Super. 2008)(holding termination under § 2511(a)(2) supported by mother's repeated incarcerations and failure to be present for child, which caused child to be without essential care

and subsistence for most of her life and which cannot be remedied despite mother's compliance with various prison programs).

In the instant case, Father's continued incarceration is clearly continued incapacity which has caused the children to be without essential parental care, control or subsistence necessary for their physical or mental well-being. The Court finds definitively that, based on the uncertainty in his anticipated release on parole,<sup>16</sup> and the subsequent eight months necessary to establish the stability required for the Agency to begin working toward reunification, the incapacity will not be remedied in a reasonable time. If Father is indeed released on parole in August and thereafter establishes a residence, finds and maintains employment, visits regularly with the children, meets all parole requirements, completes an evaluation for domestic violence as well as a drug and alcohol evaluation, enrolls in any recommended counseling and completes parenting classes, all within the eight month period, the Agency would only then begin to increase visitation, and the children would have been in placement for over two years. At their young ages, two years is entirely too long.

Further, the likelihood that Father will be successful, considering his history, is too slim to overcome the detriment of keeping the lives of these children on hold for those two years, in spite of Father's promise to "do what's necessary" and his revelation that he's "learned his lesson". "It is not enough that Father pledges to do more in the future. Once the Father has abandoned parental control through his own actions, it is not enough for him to "promise" to do better to regain parental control in the future." In re: J.L.C and J.R.C., 837 A.2d 1247, 1249 (Pa.Super. 2003). As Father has been either in jail, on house arrest, on probation or on parole

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<sup>16</sup> As time passed, Father's anticipated release date has changed repeatedly. In July 2017 it was "in the near future". In August 2017 it was "November". In October 2017 it was "January or February 2018". In January 2018 it was "summer 2018".

continuously since age 18, his testimony that he will soon be able to be a parent carries little weight. The Court therefore finds continued incapacity which has rendered the children dependent and cannot be remedied in a reasonable amount of time.

As the Court has found that statutory grounds for termination have been met under both subsections of 23 Pa. C.S.A. §2511(a), the Court must now consider the following:

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

23 Pa.C.S. § 2511(b). Further, in considering the needs and welfare of the child, 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. 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.” Id. (citations omitted).

A bonding assessment was requested by the Agency in connection with the instant petition. An assessment was conducted by Bruce Anderson, M.A., Licensed Psychologist on April 20, 2018.

While Mr. Anderson found that Father “has been making an effort to maintain contact with his children (at least with [AD1] with whom he has weekly phone contact)”, and that “he does appear to have a relationship with his five-year-old son and [AD1] probably remembers his father at least to some extent”, he also points out that AD1 “also remembers that his father was abusive to his mother”, that Father has had “very limited contact with [AD2] as she is about two years old and Father has been incarcerated for most of her life”, and, finally, that “[Father] has had no contact with [AB] as he has been incarcerated ever since [the child] was born”. Mr. Anderson concluded that the youngest two children have no relationship with Father and that while Father “does appear to have an emotional bond to the children, I do not feel that the three children have much of an emotional bond with him.” As he explained in his testimony, to form a bond a parent must provide a “consistent, loving and nurturing relationship and environment”. This has clearly not been done by Father in this case. In Mr. Anderson’s opinion, the children would not be negatively impacted by termination of Father’s parental rights.

The Court agrees with Mr. Anderson’s assessment, noting especially that witnesses perceive that AD1 has expressed indifference to the weekly phone calls with Father. The foster mother testified that although AD1 has “good conversations” with Father, the Court could have the same conversation, that there is no “personal connection”. According to the foster mother, as well as the caseworkers, AD1 never asks or talks about either Father or Mother.

The Court further agrees with Mr. Anderson’s opinion that the children have formed a strong bond with the foster family.<sup>17</sup> All reports indicate that the children are doing very well in the home and that they have formed loving relationships with both parents and the other children

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<sup>17</sup> Mr. Anderson testified that he would be more concerned about removing the children from their current foster home and breaking that bond, than about termination of Father’s parental rights.

in the home.<sup>18</sup> Significantly, AD1 has begun to make progress in his play therapy. The therapist, Shirley Larson, a licensed clinical social worker, testified that AD1 presented with the highest Adverse Childhood Experiences survey score she had ever seen, meaning he had been severely traumatized by his first few years' experiences. Ms. Larson testified that she was "horrified" at AD1's actions in his first therapy session, which expressed deep hurt and disappointment, but that he is very resilient and has in more recent sessions expressed a sense of relief and of feeling safer. Ms. Larson opined that AD1 "desperately needs consistency and structure and knowing someone will always be there for him." Considering the foster mother's testimony that AD1 is "doing exceptionally well", apparently she and her family are providing that consistency and structure.

As noted above, everyone involved believes Father does love his children. A parent's own feelings of love and affection for a child do not prevent termination of parental rights, however. In re: L.M., 923 A.2d 505 (Pa. Super. 2007). Although Father testified that "his life has no significance without his children", the Court must consider what would best serve the children's needs and welfare, not what effect the termination would have on Father. It appeared from all the evidence that Father is a father in name only. The two younger children have no memory of him and AD1's strongest memory is that of domestic violence between Father and Mother. The Court finds that compelling.

The children are in a loving and stable home. Their lives have been improved beyond measure. Their permanency cannot and should not be delayed until Father is released from prison at some unknown point in the future and completes the many requirements that would enable him to become an actual father. The children are clearly bonded with the foster parents,

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<sup>18</sup> The foster parents have three biological children, ages 8, 6 and 4.

who are willing to offer them permanency. Breaking *that* bond *would* be detrimental. The Court is therefore satisfied that termination of Father's parental rights will not destroy something in existence that is necessary and beneficial. Termination is in the best interest of the children.

Conclusions of Law

1. The Court finds that the Agency has established by clear and convincing evidence that DD, by conduct continuing for a period of at least six months immediately preceding the filing of the petition, has 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 DD has 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 him, pursuant to 23 Pa.C.S. §2511(a)(2).

3. The Court finds that the Agency has established by clear and convincing evidence that no bond exists between DD and the children and that the developmental, physical and emotional needs and welfare of the children will be best served by the termination of his parental rights pursuant to 23 Pa.C.S. §2511(b).

Accordingly, the Court will enter the attached Decree.

By the Court,

Eric R. Linhardt, Judge

cc: John Pietrovito, Esq.  
Julian Allatt, Esq., 1317 North Atherton Street, State College, PA 16803  
Angela Lovecchio, Esq.

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

IN RE: : NO. 6597  
: :  
AD1, AD2 and AB, : :  
minor children : :

DECREE

AND NOW, this day of June 2018, after a hearing on the Petition for Involuntary Termination of the Parental Rights of DD, held on June 4 and 5, 2018, it is hereby ORDERED and DECREED:

- (1) That the parental rights of 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 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 17105-17111  
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,

Eric R. Linhardt, Judge

cc: John Pietrovito, Esq.  
Julian Allatt, Esq., 1317 North Atherton Street, State College, PA 16803  
Angela Lovecchio, Esq.