

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: : NOs. 6617, 6618 ADOPTION
: :
M.K. & D.K., : :
: :
minor children, : ORPHANS' COURT DIVISION

MEMORANDUM OPINION

Before the Court are the *Petitions for Involuntary Termination of Parental Rights* filed by the Lycoming County Children & Youth Agency (“the Agency”) on October 1, 2018. The Agency seeks to terminate the parental rights of D.K. (“Father”) with respect to his children M.K. (“MK”) and D.K. (“DK”), T.K. (“TK”) mother to MK, and N.H. (“NH”) mother to DK. A hearing on the petitions was held on December 3, 4, and 12, 2018. Father was present for the first two days and was represented by Dance Drier, Esq.¹ TK was not present, but was represented by Jennifer Ayers, Esq.² NH was present and was represented by Ryan Gardner, Esq. Also present were John Pietrovito, Esq., counsel for the Agency, Meghan Young, Esq., legal counsel for the children, and Angela Lovecchio, Esq., guardian ad litem for the children.

¹ Father agreed to the involuntary termination of his parental rights during the first day of the hearing. Mr. Drier was excused on the third day of trial as his client had agreed to involuntary termination, agreed that Mr. Drier was not required to still attend, and did not appear on the third day.

² TK called Ms. Ayers at lunch on the third day of the hearing and stated that she was in the area but was unable to attend because she did not have a key to her boyfriend’s apartment. She called in to voluntarily relinquish her rights; however, the Agency would not accept her offer.

FINDINGS OF FACT

MK, now seven years old, was born on December 8, 2011 and DK, now three years old, was born on April 16, 2015. Father was born on April 13, 1964; NH, MK's mother, was born on January 10, 1978; and TK, MK's mother, was born on February 22, 1991.

This case originated with the filing of Applications for Emergency Protective Custody on September 28, 2017.³ This application was precipitated by Dean Severson ("Mr. Severson"), a code enforcement officer for the City of Williamsport, performing a rental inspection on the Father and NH's rental property.⁴ When Mr. Severson proceeded to the second floor during his inspection, he witnessed NH fumbling with a padlock on the outside of the first bedroom door. After she opened the bedroom door, Mr. Severson stepped into the barren room containing only a "filthy" mattress in the middle of the room, a blanket, a pillow, and MK in his underwear.⁵ Although it was approximately 11:00 a.m., the bedroom light was on because natural light was unable to penetrate through the boards covering the two bedroom windows.⁶ Plaster was peeling from the walls and the bedroom door, and holes and crevices were apparent in the walls.⁷ Mr. Severson informed NH that the padlocks and window boards would have to be immediately removed before he would leave. NH was irate. She retorted that MK is not her child but her husband's, and she did not want to remove the locks because MK was "destroying" the house. Mr. Severson replied that if she did not remove said items,

³ Plaintiff's Exhibits 3 (Amended Petition re: MK), 4 (Original Petition re: MK), 5 (Amended Petition re: DK), & 6 (Original Petition re: DK). All of Plaintiff's exhibits were moved into evidence without objection.

⁴ The landlord of the property was also present.

⁵ Plaintiff's Exs. 49 & 63.

⁶ Plaintiff's Exs. 51-52.

⁷ Plaintiff's Exs. 53-62.

then he would call the Agency and have the child taken away. NH dared him to call the Agency.

As Mr. Severson stepped out of the first bedroom on the second floor and headed to the second bedroom, NH again walked quickly past him and removed a screw driver out of a locking mechanism on the second bedroom door. Mr. Severson described this second room as “extremely cluttered,” with toys and clothes strewn around the bedroom.⁸ He witnessed DK in a “Pack N’ Play” and a television and two dressers stacked on top of another. Mr. Severson described the stacked furniture as possessing a lean that concerned him because DK’s “Pack N. Play” was underneath the furniture. Mr. Severson again told NH to remove the door lock, which the landlord of the property did before Mr. Severson left. Mr. Severson called the Agency after leaving the property.

On September 27, 2017, Edward Frame (“Mr. Frame”), an assessment case worker for the Agency, visited Father and NH’s residence after receiving Mr. Severson’s report. Upon approaching the residence at 3:30 p.m., Mr. Frame interrupted Father cutting the grass. Mr. Frame recounted the incident that was reported and Father indicated he was not aware of what had occurred. When Mr. Frame walked up to the second floor of the residence and found that the padlocks on the bedrooms had been removed, but the children were still in their rooms. The state of the rooms had not been rectified. At the Father’s and NH’s residence, Mr. Frame recounted a similarly troubling scene to Mr. Severson’s account. Mr. Frame also noted that a training-potty rested in the far corner of MK’s bedroom, yet the room was rank with the smell of urine since no

⁸ Plaintiff’s Exs. 67-68.

system was providing ventilation or circulation in the room.⁹ Mr. Frame described MK's mattress and carpet as soaked with urine. In fact, Mr. Frame noted that his feet would stick to the carpet because of the urine stains. Even though Mr. Frame was concerned, he did not remove the children from the residence at this time. He informed Father and NH that he would return the next morning and would expect improvements to be made. Mr. Frame testified that Father indicated he was not aware of the prior incident and would make improvements to ensure MK's and DK's safety and; thus, Mr. Frame did not believe immediate removal was required.

Mr. Frame returned the morning of September 28, 2017 and found that no improvements had been made to MK's room. Mr. Frame further learned that Father had known about the locked bedrooms and MK had not seen a physician in three years. Further, a proper plan of care and supervision was not reached. Mr. Frame contacted the Agency and requested that it petition this Court for emergency custody. On September 28, 2017, the Court granted emergency custody, finding that the Agency had presented sufficient evidence that returning the children to Father's and NH's residence was contrary to the welfare of the children, as reasonable efforts had been attempted to prevent removal of the children from the residence.¹⁰

When Mr. Frame and Elizabeth Spagnuolo ("Ms. Spagnuolo"), also an assessment caseworker for the Agency, entered Father's and NH's residence to remove the children, MK, eager to be removed from his circumstances, approached Mr.

⁹ Plaintiff's Ex. 50.

¹⁰ Plaintiff's Exs. 1 (Order for Emergency Protective Custody re: MK) & 2 (Order for Emergency Protective Custody re: DK).

Frame and told Mr. Frame, “I’m coming with you.”¹¹ Mr. Frame then requested clean clothes for the children, which NH was unable to provide. She stated that all the clothes were dirty, handing Mr. Frame a dirty blanket to wrap around DK. Mr. Frame described NH as being visibly upset that her son, DK, was being removed, but bore “no emotion” at the sight of MK’s removal. Ms. Spagnuolo carried DK outside and described his upper body control as shaking and “floppy,” although DK did not attempt to escape her grasp. Conversely, MK was very “chatty” and wanted to know about his new home. MK described NH as an “a**h***” and never wanted to see her again. MK began joyfully fist pumping in the air as he was driven away from Father’s and NH’s residence. During the car ride, both children were given water to drink. Ms. Spagnuolo aided DK in drinking out of a sippy cup, as it appeared that he did not know how to use it. The children were driven to Dr. Ralph Kaiser (“Dr. Kaiser”) for physical examinations.¹²

Regarding MK, Dr. Kaiser noted that he had an “unremarkable appearance” and was extremely interested in everything in the examination room. MK was determined to be in the lower half of average for the height/weight of a five year old, possessing low amounts of creatine in his body, and slightly dehydrated.¹³ Dr. Kaiser noted that MK had only been seen prior to September 2017 in January 2014 because of an emergency room visit for pneumonia, February 2014, and March 11, 2014 for a physical

¹¹ On September 28, 2017, the Agency sent Father and NH a letter notifying them that the Agency was required by law to inform them when a report of suspected child abuse is made to the Agency and Department of Human Services. Plaintiff’s Exs. 95, 96, 110 & 111 . The letter also informed Father and NH of the Agency’s role in investigating said report. *Id.* On October 3, 2017, the Agency sent TK a letter informing her of the allegations and need for medical records. Plaintiff’s Ex. 74. On October 17, 2017, Father and NH were informed of the recommendations resulting from said investigation. Plaintiff’s Exs. 97 & 112.

¹² Dr. Kaiser has been a pediatrician for the last forty-five (45) years and was accepted as an expert in pediatrics at the Involuntary Termination hearing.

¹³ Plaintiff’s Ex. 64. Dr. Kaiser testified that “slight dehydration” means the child has not drank sufficient liquids for six to eight hours.

examination by a partner in Dr. Kaiser's practice. Generally, recommended physician visits for children are: shortly after birth, two months, four months, six months, nine months, twelve months, fifteen months, eighteen months, two years, one year and six months, three years, four years, and five years of age. MK had missed a substantial number of immunizations.¹⁴ Nevertheless, based on his current examination, Dr. Kaiser was not concerned about MK's results and scheduled to check up on MK in the coming weeks.

Regarding DK, Dr. Kaiser described him as the exact antithesis of MK. DK was timid and shy, did not make any sounds initially, and appeared to be non-verbal. Dr. Kaiser stated that he was concerned about developmental problems with DK, as DK's behavior was abnormal for his age. DK's test results evidenced a low creatine level and moderate dehydration.¹⁵ When Dr. Kaiser requested medical records for DK, Dr. Kaiser learned that DK had only been seen by a physician on July 28, 2017 for his fifteen month checkup and August 7, 2017 for his two year checkup. These checkups were past due and DK was behind on his immunizations as well. Because of DK's developmental delay, Dr. Kaiser scheduled DK to return in one week.

Also on September 28, 2018, Kara Smith ("Mrs. Smith") and Caleb Smith ("Mr. Smith") (collectively the "Smiths") were selected as resource parents for MK and DK. The Smiths also had three adopted children under the age of eight living at their home when MK and DK were placed. Mrs. Smith testified that when MK first arrived, he was

¹⁴ At the hearing, NH's counsel argued that some parents are adverse to vaccines. While some parents are adverse to *any* vaccinations, the evidence shows that Father and NH were inconsistent with appointments for vaccinations. Additionally, there was no evidence elicited that Father, NH, or TK objected to vaccinations.

¹⁵ Plaintiff's Ex. 69 (CDC Growth Chart). DK had been admitted to Williamsport Regional Medical Center-Emergency Department for mild dehydration on September 30, 2017. Plaintiff's Exhibit 70.

excited but dressed in dirty clothes and wore shoes that were a few sizes too big. Mrs. Smith noted that he was well behaved at Ruby Tuesday's, where the family went out to eat after MK and DK arrived, and appeared famished as he ate everything at the salad bar. Mrs. Smith described MK as excited and wanting to touch everything in Ruby Tuesday's. Mrs. Smith considered this behavior to be normal for MK's age and not misbehavior.

Mrs. Smith described DK as having long shaggy, curly hair, irritated eyes, and a pale disposition when she first met him. He appeared malnourished and remained stationary most of the time. DK also failed to react to toys or flashing lights when placed in front of him. DK did not respond to sounds, such as a call for dinner. Mrs. Smith would need to prompt DK multiple times to do something before he would acquiesce. When DK first arrived, Mrs. Smith noted that he did not interact with anyone and MK and DK "did not seem to know each other," despite growing up in the same residence. DK wouldn't listen to commands and wanted to be carried everywhere. Mrs. Smith also noted that when the family stayed at a hotel during a church conference and placed DK in a "Pack N' Play," DK became hysterical and would not stop crying. Mrs. Smith noted that this was the only time DK acted this way. Mrs. Smith further testified that when MK and DK arrived they were not trained to use the bathroom.

On September 29, 2017, a Shelter Care Application was filed and a hearing was held before Juvenile Court Hearing Officer Dana Jacques ("Hearing Officer").¹⁶ The Hearing Officer recommended that the legal and physical custody of the children remain with the Agency, placement of the children remain in resource care, and the Agency

¹⁶ Plaintiff's Exs. 9 (MK Application) & 10 (DK Application).

have protective supervision.¹⁷ The Hearing Officer also recommended that DK be evaluated for Early Intervention, MK be tested academically to determine if kindergarten or pre-school was appropriate, and a family find be performed.¹⁸ The Court adopted the Hearing Officer's recommendation on October 2, 2017.

Also, on September 29, 2017, two Dependency Petitions were filed.¹⁹ On October 6 and 9, 2017, a hearing on the petitions was held. The Agency sought to retain legal and physical custody of the children and requested that the children remain in their current resource home placement.²⁰ Father and NH sought the return of the children and while TK agreed with the adjudication of dependency she desired her mother to be considered for resource home placement.²¹ Ms. Lovecchio, Esq., as guardian ad litem, agreed with the Agency.²² Father, NH, and TK stipulated to an offer of proof regarding Mr. Severson's testimony. Dr. Kaiser, Mrs. Smith, and Mr. Frame also provided testimony consistent with the facts as described above.²³ TK testified that she resided in Schuylkill County and had not seen her son, MK, in over three years because Father ignored her messages.²⁴ She had attempted to contact Father by telephone and Facebook Messenger over the years; however, she described his conduct as dilatory.²⁵ TK testified that she was aware that MK had not been in school

¹⁷ Plaintiff's Exs. 7 (Recommendation for Shelter Care re: MK) & 8 (Recommendation for Shelter Care re: DK).

¹⁸ Plaintiff's Exs. 7 & 8.

¹⁹ Plaintiff's Exs. 13 (Dependency Petition re: MK) & 14 (Dependency Petition re: DK).

²⁰ Plaintiff's Ex. 129 (Transcript, Dependency Hearing at 4 (Oct. 6, 2017)) (hereinafter "T1").

²¹ T1 at 5.

²² T1 at 6.

²³ T1 at 9, 11-33, 33-67.

²⁴ T1 at 69-70.

²⁵ *Id.*

and had not been seen by a physician until recently.²⁶ She mentioned her concerns to the Children & Youth Agency of Schuylkill County and requested that one of their caseworkers visit Father's and NH's residence.²⁷ TK reiterated that she is fighting for MK, just as she is fighting for her three other children that were in the custody of the Children & Youth Agency of Schuylkill County.²⁸

On October 9, 2017, the hearing resumed and NH took the stand.²⁹ NH testified that she had locked MK in his room because he would damage bedroom walls, heater vents, carpets, as well as "steal" DVDs, paperwork, and DK's toys from her room and "destroy" them while Father, NH and DK attended church.³⁰ NH also testified that she locked MK in his bedroom during the daytime to keep him from running off when she was cleaning.³¹ She recounted that she had found him in the backyard once when he had not asked for permission to leave the house.³² NH testified that she boarded MK's bedroom windows for his safety.³³ She also testified that she removed a bunkbed and dresser from MK's bedroom because she was concerned for his safety and she removed his toys as he used them to damage his bedroom walls.³⁴ She testified that he would only be isolated in his locked bedroom during the day for a few minutes at a time when he was placed in time-out and during the night from around 8:00 p.m. to (at least)

²⁶ *Id.*

²⁷ *Id.* at 70.

²⁸ *Id.*

²⁹ Plaintiff's Ex. 129 (Transcript, Dependency Hearing at 3 (Oct. 9, 2017)) (hereinafter "T2").

³⁰ *Id.* at 5. NH blamed MK for the damage to his bedroom walls and the chipped paint. *Id.* at 35-36.

³¹ *Id.* at 6.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 11.

5:00 a.m.³⁵ She further testified that when MK was locked in his bedroom at night, she usually did not check in on him for fear of waking him.³⁶ NH was not concerned about fire safety as she replaced the fire alarm batteries every October.³⁷ She testified that she placed the training potty in his room for when he was locked in his room at night, admitting that she cleaned it “[a]s much as possible.”³⁸ She also conceded that she did not know if the mattress was soaked with urine as MK would pee on the floor when he was locked in his bedroom at night.³⁹

Regarding dehydration, NH testified that she never withheld fluids from MK or DK as they were on a “timed schedule for drinks.”⁴⁰ This schedule allowed drinks at breakfast, snack time, lunch, afternoon snack, dinner, and before bedtime.⁴¹ She elaborated that she would not allow the children to have water whenever they desired water because she was told it was not healthy for children and MK would wet his bed at night.⁴² NH testified that she drafted a “Parenting Plan” and Daily Activates list to combat the Agency’s claims that the children were locked in their rooms all day.⁴³ She stated that she loved the children and had a close relationship with DK.⁴⁴ During cross-examination, NH described MK as an unruly child who is one of the only children she

³⁵ *Id.* at 7-8. NH’s initial testimony regarding the three minute time limit was undermined by her later testimony that MK would be locked in his room if she was cleaning or mowing the lawn or when Father was not home to watch MK. *Id.* at 47-50.

³⁶ *Id.* at 34.

³⁷ *Id.* at 8.

³⁸ *Id.* at 15-16.

³⁹ *Id.* at 15.

⁴⁰ *Id.* at 9.

⁴¹ *Id.* at 46. NH also testified that they were allowed more opportunities to drink if “it’s warmer out.” *Id.*

⁴² *Id.* at 44.

⁴³ *Id.* at 18-21.

⁴⁴ *Id.* at 21. NH also stated that she had no relationship with MK, but he had hugged and kissed her the last two times he had seen her. *Id.*

has been unable to control.⁴⁵ When pressed on why she did not seek professional guidance on MK's behavior, NH stated "Because I'm not his actual parent."⁴⁶

NH testified that she had repaired and repainted MK's bedroom walls, denying for a second time that he was locked in his room for longer than minutes at a time during the daytime.⁴⁷ NH also testified that locking MK in his bedroom was not her first choice to curb his alleged destructive behaviors; however, she testified that she "didn't try anything" else.⁴⁸ NH was similarly unable to provide a sufficient explanation as to why proper bedsheets were not on either child's mattress.⁴⁹

After listening to the testimony, this Court found the children to be dependent pursuant to 42 Pa.C.S.A. § 6302 and ordered the children to remain in placement.⁵⁰ The Court described NH's parenting as "medieval" and her treatment of MK as "abominable."⁵¹ The Court further described MK's inability to leave his room at night and snuggle with his parents if he became fearful as "callousness."⁵² Regarding TK, the Court described her lack of parental initiative as "pathetic."⁵³ Supervised visitation twice a week at the visitation center was established for Father and NH as a couple and TK individually.⁵⁴

⁴⁵ *Id.* at 39-42. Mr. Eric Hartshaw ("Mr. Hartshaw"), pastor of Montoursville Brethren in Christ Church, testified that he had only met MK one time when Mr. Hartshaw was helping NH move a dresser and MK appeared to be "your typical precocious little boy." *Id.* at 53.

⁴⁶ *Id.* at 43.

⁴⁷ *Id.* at 25-27.

⁴⁸ *Id.* at 31.

⁴⁹ *Id.* at 33.

⁵⁰ *Id.* at 55; Plaintiff's Exs. 11 (Order of Adjudication and Disposition – Child Dependent re: MK) & 12 (Order of Adjudication and Disposition – Child Dependent re: DK).

⁵¹ T2. at 55-56.

⁵² *Id.* at 56.

⁵³ *Id.* at 59.

⁵⁴ *Id.* at 58.

On November 17, 2017, Ms. Teresa Ross (“Ms. Ross”), the Agency’s ongoing caseworker, petitioned the Court for a Permanency Review Hearing.⁵⁵ On December 12, 2017, a permanency review hearing was held before the Hearing Officer. The Hearing Officer found that Father had substantially complied with the permanency plan as he participated with Outreach services regarding parenting, cooperated with the agency regarding establishing a support system, maintained housing during the review period, and attended all visits with his children.⁵⁶ But regarding Father’s progress, he had made only “moderate progress.”⁵⁷ Conversely, the Hearing Officer found that TK had not progressed toward alleviating the original placement concerns, as she had shown “minimal bond with the child” and was incarcerated.⁵⁸ While NH’s behavior was deemed to evidence substantial compliance with the permanency plan, she had made “minimal progress” as she still not “understand why it was wrong to lock the children in their bedrooms for long periods of time.”⁵⁹ The Hearing Officer recommended the

⁵⁵ Plaintiff’s Ex. 20 (Petition for Permanency Review Hearing re: MK) & 21 (Petition for Permanency Review Hearing re: DK). Child Permanency Plans were established related to MK and DK’s care for the period of September 28, 2017 to March 28, 2018. For Father and TK, the plan focused on parenting classes, demonstrating the ability to use proper parenting techniques in class, undergoing psychological evaluations and following any recommendations, establishing a positive support system, ensuring safe and sanitary living conditions for themselves and children, engaging the children in age appropriate interactions, establishing a primary care physician and dentist for MK, and participating in any school related evaluations and implementing recommendations. Plaintiff’s Ex. 15. For Father and NH, the plan focused on similar goals, adding the requirement that Father and NH participate in early intervention meetings and follow recommendations. Plaintiff’s Ex. 16. A “Family Service Plan” was also drafted for the period of September 28, 2017 to March 28, 2018. Plaintiff’s Ex. 17. TK underwent her Drug & Alcohol Assessment on January 18, 2018, completing her counseling evaluation on January 24, 2018, her psychological evaluation on March 27, 2018, and Family Group Decision Making meeting on May 15, 2018. Plaintiff’s Exs. 80, 89, 91, 92 & 93.

⁵⁶ Plaintiff’s Exs. 18 (Recommendation Permanency Review re: MK) & 19 (Recommendation Permanency Review re: DK).

⁵⁷ *Id.*

⁵⁸ Plaintiff’s Ex. 18. TK had written to Ms. Ross requesting that she visit with MK via telephone calls from the prison. Plaintiff’s Ex. 75. TK indicated that she had not seen MK for three years because of Father, but wished that Ms. Ross would give MK a birthday card TK had made for him. *Id.* TK also disputed that she lacked adequate housing in St. Clair, Pennsylvania. *Id.*

⁵⁹ Plaintiff’s Ex. 19.

reaffirmation of dependency and that the children continue in resource care.⁶⁰ The permanency plan developed by the Agency for the period of December 12, 2017 through June 12, 2018 was also recommended as appropriate and feasible.⁶¹ The current placement goal remained return to the parents and the concurrent placement plan was for adoption.⁶² The Court adopted the Hearing Officer's recommendations on December 13, 2017.

On February 16, 2018, Ms. Ross petitioned the Court for a second Permanency Review Hearing.⁶³ On March 6, 2018, the first day of the second permanency review hearing was held. At the conclusion of this part of the hearing, the Court ordered that DK undergo the hearing tests that were recommended by Early Intervention as soon as possible and an appointment be scheduled with Dr. Kaiser to update him and seek his counsel as to whether further evaluations were warranted.⁶⁴

On April 2, 2018, the second day of the hearing was held. Regarding MK, the Court found moderate compliance and progress for Father as he was participating with parenting classes, underwent the Psychological Evaluation on December 21, 2017, attended MK's appointment during the review period and attended all available visits

⁶⁰ Plaintiff's Exs. 18 (Recommendation Permanency Review re: MK) & 19 (Recommendation Permanency Review re: DK).

⁶¹ *Id.* The Child Placement Plans for the period of December 12, 2017 to June 12, 2018 remained consistent with the prior plans—although the school and physician appointments plans were updated to reflect that the appropriate professionals had been secured. Plaintiff's Exs. 22 (Child Permanency Plan re: MK) & 23 (Child Permanency Plan re: DK). The plans also noted that Father and NH had not missed a visit with MK and DK, and TK has missed only one visit. *Id.* They also note that TK was dealing with legal troubles in Schuylkill County and was pregnant with her sixth child. *Id.* The "Family Service Plan" was also consistent with the prior version. Plaintiff's Ex. 24. The plan noted that MK and DK were placed with the same resource family. *Id.* It also noted that MK was enrolled in Kindergarten, but was struggling behaviorally, and DK was non-verbal. *Id.*

⁶² *Id.*

⁶³ Plaintiff's Exs. 28 (Petition for Permanency Review Hearing re: MK) & 29 (Petition for Permanency Review Hearing re: DK).

⁶⁴ Plaintiff's Ex. 27 (Order, DP-48-2017, DP-49-2017 (Mar. 6, 2018)).

during the reporting period.⁶⁵ Conversely, the Court found minimal compliance and no progress for TK as she was incarcerated in Schuylkill County from November 22, 2017 to December 29, 2017 and again in March 2018.⁶⁶ The Court found that she did not participate in parenting services, did not attend her psychological evaluation, did not telephonically participate in MK's medical appointment, and only attended four out of fifteen visits—ten missed due to incarceration.⁶⁷ The Court found that NH had moderately complied with the permanency plan in that she attended all visits, medical appointments and participated in family group decision making; however, minimal progress was noted based on NH not “gaining any insight into her actions.”⁶⁸

The Court reaffirmed dependency and that the children were to be continued in resource care.⁶⁹ The permanency plan developed by the Agency for the period of March 6, 2018 through September 6, 2018 was also deemed appropriate and feasible.⁷⁰ The current placement goal remained return to the parents and the concurrent placement plan was for adoption.⁷¹

⁶⁵ Plaintiff's Exs. 25 (Permanency Review Order re: MK) & 108 (Psychological Evaluation).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Plaintiff's Exs. 26 (Permanency Review Order re: DK), 127 (Family Group Decision Making Report). NH completed her psychological evaluation on December 13, 2017. Plaintiff's Ex. 125.

⁶⁹ Plaintiff's Exs. 25, 26.

⁷⁰ *Id.* The Child Placement Plans for the period of March 6, 2018 through September 6, 2018 remained consistent with the prior plans, although Father and TK had completed parenting classes at this juncture and; thus, the plans now more heavily focused on implementation. Plaintiff's Ex. 30 (Child Permanency Plan re: MK) & 31 (Child Permanency Plan re: DK). The progress report for Father and NH indicated that only Father was “attempting to learn” whereas NH believed that none of the parenting techniques worked. Plaintiff's Ex. 30. Apparently, NH “knows all of ‘this stuff.’” *Id.* Regarding TK, it noted that she lived in Schuylkill County, but was arrested on an outstanding bench warrant when she returned to Schuylkill County and was in county jail until early January. *Id.* TK would be resuming visits with MK in mid-January. *Id.* The “Family Service Plan” was also consistent with the prior version. Plaintiff's Ex. 32. While DK was not of school age, he was receiving occupational therapy, speech therapy and early head start services. *Id.* The speech therapist was concerned that DK could not hear because he did not respond to his name when the person was not in his field of vision. *Id.* NH attended an early intervention review for DK and became upset; she did not agree that a hearing screening was necessary. *Id.*

⁷¹ *Id.*

On May 31, 2018, Ms. Ross petitioned the Court for a third Permanency Review Hearing.⁷² On June 15 and 25, 2018, the third permanency review hearing was held. Father was found to have moderately complied with the permanency plan, but only minimally progressed towards alleviating the circumstances which necessitated the original placement.⁷³ Father is described as “showed little insight into why the children were removed, and seems to think the children are being spoiled in resource care.”⁷⁴ TK was found to have minimally complied with the permanency plan and alleviating previous concerns.⁷⁵ Regarding compliance, she was incarcerated in Lycoming County and was serving sixty days of house arrest during the review period.⁷⁶ She is noted as cooperative and invested in her parenting classes when she attends, but did not participate in school or physician visits.⁷⁷ She attended seven out of eleven visits—three missed due to her incarceration and house arrest.⁷⁸ When TK does visit MK, the visits were found to “go[] well.”⁷⁹ Regarding NH, the Hearing Officer describes her performance as moderately complying with the permanency plan and minimally progressing to alleviate prior concerns.⁸⁰ NH is noted as attending all appointments and available visits during the review period, and utilizing some of the parenting techniques

⁷² Plaintiff's Exs. 35 (Petition for Permanency Review Hearing re: MK) & 36 (Petition for Permanency Review Hearing re: DK).

⁷³ Plaintiff's Exs. 33 (Recommendation Permanency Review re: MK) & 34 (Recommendation Permanency Review re: DK).

⁷⁴ *Id.*

⁷⁵ Plaintiff's Ex. 33 (Recommendation Permanency Review re: MK).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Plaintiff's Ex. 34 (Recommendation Permanency Review re: DK).

she learned during her parenting classes.⁸¹ However, NH is found not to believe her actions in locking up the children were wrong.⁸²

The Hearing Officer provided “Additional Findings of Fact.” The Hearing Officer specifically lauded the children’s improvement while in resource care.⁸³ MK had improved in his kindergarten studies, his behavior at school had improved, and he was involved with the Friendship House during the summer.⁸⁴ DK had qualified for speech and occupational therapy at Early Intervention as well as BLAST once he turned three years old.⁸⁵ Based on these resources, DK began to “say a few words” and started playing with MK and the other children in the resource home.⁸⁶ DK’s Conductive bilateral Hearing Loss and Dysfunction of Eustachian Tube was diagnosed and DK was referred to a specialist for treatment.⁸⁷ The Hearing Officer expressed a continued concern for NH’s sole focus on DK during the visits and NH’s harsher voice when speaking with MK.⁸⁸ NH’s attitude toward both children was noted as vital because Father insisted that NH would be the sole caregiver while he worked during the day.⁸⁹ The Hearing Officer further found that NH failed to “show any remorse for her actions, or insight into why her actions were wrong.”⁹⁰ Importantly, it was found that NH believed MK had fetal alcohol syndrome and she would put a padlock on the door again if MK were to return home, unless his dose of Adderall was sufficiently increased to curb his

⁸¹ *Id.*
⁸² *Id.*
⁸³ *Id.*
⁸⁴ *Id.*
⁸⁵ *Id.*
⁸⁶ *Id.*
⁸⁷ *Id.*
⁸⁸ *Id.*
⁸⁹ *Id.*
⁹⁰ *Id.*

destructive behavior.⁹¹ The Hearing Officer also found that NH refused to accept responsibility and instead blamed everyone else.⁹² Indeed, NH was obstinate in her opposition to having DK's hearing tested and, even when DK was found to be hearing impaired, NH "showed no regret for her refusal to have [DK] tested."⁹³ Bizarrely, NH blamed his resource home for causing the hearing loss.⁹⁴

The Hearing Officer also expressed dismay that Father and NH had failed to remove the original training-potty from MK's room before Ms. Ross inspected their residence prior to the commencement of in-home visits.⁹⁵ The Hearing Officer found this failure to be a clear indication that they would again use it for MK.⁹⁶ She found them to be merely "going through the motions of using approved parenting techniques when supervised."⁹⁷ Perhaps most telling was the Hearing Officer's recommendation that in-home visits be stopped because the children's behavior after visiting with Father and NH became particularly disturbing.⁹⁸ After the first in-home visit, MK "acted out sexually with [a] resource sibling," saying he saw it on television at Father's and NH's residence; and DK refused to eat dinner, screaming and crying for long periods of time.⁹⁹

After another visit, MK exposed himself to the other children in the resource home, urinated all over his bedroom floor and dresser because he was afraid to leave

⁹¹ *Id.*
⁹² *Id.*
⁹³ *Id.*
⁹⁴ *Id.*
⁹⁵ *Id.*
⁹⁶ *Id.*
⁹⁷ *Id.*
⁹⁸ *Id.*
⁹⁹ *Id.*

the room, and threw another child's glasses across the room.¹⁰⁰ When he was asked to go to his bedroom and start getting ready for bed, he began shaking and crying.¹⁰¹ He then proceeded to stand in the middle of the bedroom and "soak the carpet with urine."¹⁰² On other occasions, MK urinated in his pants and hid them, urinated in his pajamas, and banged his head against the wall when asked to sit in the corner for timeout.¹⁰³ When NH was questioned regarding MK's urination problem, she testified that he had a urination problem and—at the age of five—she began forcing MK to clean up his urine.¹⁰⁴ The Hearing Officer recommended moving in-home visits to public communal areas.¹⁰⁵ Meanwhile, MK would attend Play Therapy sessions with the hope of resuming in-home visitation once these visits were not deemed traumatizing to the children.¹⁰⁶ The Hearing Officer also recommended that NH and MK be given their own visits once a week in order to establish a positive bond between them.¹⁰⁷

Finally, the Hearing Officer recommended the reaffirmation of dependency and that the children continue in resource care.¹⁰⁸ The permanency plan developed by the Agency for the period of June 15, 2018 through December 15, 2018 was also recommended as appropriate and feasible.¹⁰⁹ The current placement goal remained

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Plaintiff's Exs. 33 & 34.

¹⁰⁹ *Id.* The Child Placement Plans for the period of June 15, 2018 to December 15, 2018 remained consistent with the prior plans. Plaintiff's Exs. 37 (Child Permanency Plan re: MK) & 38 (Child Permanency Plan re: DK). There is noted concern for MK's behaviors at resource home evidencing continuing trauma from being locked in his bedroom at Father and NH's residence. Plaintiff's Ex. 37. TK is not deemed an appropriate resource and NH continued to ignore MK during visits. *Id.* There is noted concern for NH continuing to deny health concerns for DK and Father failing to advocate for his children.

return to the parents and the concurrent placement plan was for adoption.¹¹⁰ The Court adopted the Hearing Officer's recommendations on July 2, 2018.

On August 23, 2018, Ms. Ross petitioned the Court for a fourth Permanency Review Hearing.¹¹¹ On September 11, 2018, the first day of the fourth permanency review hearing was held. Regarding the issue of whether DK could undergo corrective surgery for his hearing impairment, the Court ordered that DK would attend the physician appointment on September 17, 2018 to determine whether such a procedure was necessary and, if it was deemed necessary, then the surgery would occur as scheduled on September 19, 2018.¹¹² As the Court was unable to finish the hearing on time, a continuation of the hearing was scheduled for October 9, 2018.¹¹³ The Court stated that, based on the agreement of all counsel, the second limited issue before the Court was whether it should grant the Agency's request that one-on-one visits between NH and MK be terminated.¹¹⁴ The Court concurred and ordered those visits to cease.¹¹⁵ However, the Court declined to reduce the quantity of visits between Father and NH with MK and DK.¹¹⁶

Plaintiff's Ex. 38. Otherwise, DK showed signs of improvement in the resource home and began speaking a few words. *Id.* The "Family Service Plan" was also consistent with the prior version. Plaintiff's Ex. 39. The plan indicated that DK was hesitant to interact with Father and NH during a few visits, and MK stopped playing when one caseworker left and asked whether the other caseworker was leaving also. *Id.* The plan also indicated that three of TK's children are in placement in Schuylkill County and have been in placement for twelve months. *Id.* TK was pregnant with her sixth child and due on June 3, 2018. *Id.* TK and MK struggled with parent-child role as TK was still trying to establish a relationship with MK. *Id.*

¹¹⁰ *Id.*

¹¹¹ Plaintiff's Exs. 43 (Petition for Permanency Review Hearing re: MK), 42 (Amended Petition for Permanency Review Hearing re: MK), 45 (Petition for Permanency Review Hearing re: DK), & 44 (Amended Petition for Permanency Review Hearing re: DK).

¹¹² *Id.*

¹¹³ Plaintiff's Ex. 40 (Order, DP-48-2017, DP-49-2017 (Sept. 13, 2018)).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* The Child Placement Plans for the period of September 11, 2018 through March 11, 2019 remained consistent with the prior plans. Plaintiff's Ex. 46 (Child Permanency Plan re: MK) & 47 (Child

On October 9, 2018, the second day of the fourth permanency review hearing was held. The Court found that Father had evidenced minimal compliance with the permanency plan and no/minimal compliance in alleviating the circumstances which necessitated the original placement.¹¹⁷ The Court found TK to have evidenced minimal compliance with the permanency plan and no compliance in alleviating the circumstances which necessitated the original placement, as she was currently incarcerated and attended only fourteen out of twenty visits.¹¹⁸ Regarding NH, the Court found minimal compliance with the permanency plan and no progress in alleviating the circumstances which necessitated the original placement.¹¹⁹ She only attended two parenting classes and attended all available visits during the review period; however, she refused to meet DK's medical needs and consent to the implementation of tubes in DK's ears to alleviate his hearing issues.¹²⁰

On November 19, 2018, the Court issued a separate order detailing the testimony and findings from the September 11 and October 9, 2018 hearings. At the

Permanency Plan re: DK). TK gave birth to her sixth child on May 30, 2018 and he was placed in resource care from the hospital. Plaintiff's Ex. 46. TK is noted as still unable to find stable housing and income and easily overwhelmed by traveling between Schuylkill County and Lycoming County to visit her children. *Id.* Concerns of alcohol and drug abuse remained. *Id.* Regarding Father and NH, the plan indicated that they continue not to interact as a family during the visits, despite being told to play as a group. Plaintiff's Ex. 47. The "Family Service Plan" was also consistent with the prior version. Plaintiff's Ex. 48.

¹¹⁷ Plaintiff's Exs. 133 (Permanency Review Order re: MK) & 134 (Permanency Review Order re: DK). Ms. Ross corresponded with Father, keeping him up-to-date on MK's and DK's progress. Plaintiff's Exs. 98-107. These letters also notified Father of upcoming appointments and important dates. *Id.*

¹¹⁸ Plaintiff's Ex. 133 (Permanency Review Order re: MK). Ms. Ross corresponded with TK, including when TK was incarcerated, and kept TK up-to-date on MK's life and progress. Plaintiff's Exs. 74 (Oct. 3, 2017), 76 (Nov. 17, 2017), 77 (Dec. 6, 2017), 78 (Jan. 30, 2018), 79 (Feb. 28, 2018), 81 (Mar. 23, 2018), 84 (May 17, 2018), 85 (July 26, 2018), and 86 (Aug. 21, 2018). This correspondence also included logistical information of making sure TK could attend visits with MK when she was not incarcerated.

¹¹⁹ Plaintiff's Ex. 134 (Permanency Review Order re: DK). Ms. Ross corresponded with NH, keeping her up-to-date on MK's and DK's progress. Plaintiff's Exs. 113-15, 118-22, 123-24. These letters also notified NH of upcoming appointments and important dates. *Id.*

¹²⁰ Plaintiff's Exs. 133 (Permanency Review Order re: MK), at 1, & 134 (Permanency Review Order re: DK), at 1 (Order, DP-48-2017, DP-49-2017 (Nov. 19, 2018)) (hereinafter "November Order").

September 11th hearing, Shirley Larson (“Ms. Larson”), a registered play therapist, testified regarding her work with MK.¹²¹ She began meeting with MK in June 2018 and had sessions once a week.¹²² She testified that MK confided in her that NH abused him on multiple occasions and expressed joy that he no longer had to visit with NH one-on-one.¹²³ MK further confided that he did not want to see NH again.¹²⁴ While MK would not discuss what transpired during the visits with NH, he did report that she “used to hit him and make him eat his own poop.”¹²⁵

Mickey Zimmerman (“Ms. Zimmerman”), a caseworker for the Schuylkill County Children & Youth Agency, testified that she had worked with TK and her four children since May 2017.¹²⁶ These other children were removed from TK’s care when they were found in the home unattended.¹²⁷ The two youngest children were under a heat lamp while the oldest child was locked in a cage that could only be described—in favorable terms—as a locked crib with a lattice lid.¹²⁸ Although TK had appropriate housing, she resided with a known drug user and altercations had occurred in the past between them.¹²⁹ Her visits with her children were also not consistent.¹³⁰ Ms. Zimmerman testified that TK was seeking drug and alcohol treatment, and the goals related to TK concern abuse and mental health, maintaining sobriety, consistent parenting,

¹²¹ November Order.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at 1-2. Mr. Frame and Mrs. Smith also testified that MK had told them that NH had made him eat his own poop. *Id.* at 4, 5.

¹²⁶ *Id.* at 2. The children’s ages were three years old, two years old, one year old, and three months old.

Id.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

appropriate supervision and positive response to authority.¹³¹ Ms. Zimmerman testified that minimal progress had been made with TK and these goals, as TK had difficulty controlling her temper.¹³² In October 2018, the Schuylkill County Children & Youth Agency intended to change the goal from reunification to adoption.¹³³

Ms. Ross was called to testify regarding DK's required surgery to have tubes placed in his ears to drain fluid out of his ears and whether one-on-one visits with NH should continue.¹³⁴ Ms. Ross testified that an appointment with a physician was scheduled for September 17, 2018 after the surgery was recommended by an Otorhinolaryngology specialist.¹³⁵ When Ms. Ross discussed the issue with Father and NH, NH became infuriated and stormed out of the meeting; Father indicated he could not consent out of fear of angering NH.¹³⁶ NH ultimately decided on securing a second opinion, but never scheduled an appointment with a second physician.¹³⁷

¹³¹ *Id.*

¹³² *Id.* at 2-3.

¹³³ *Id.* at 3.

¹³⁴ *Id.*

¹³⁵ *Id.* On May 21, 2018, DK was seen at Susquehanna Health for an audiological evaluation. Plaintiff's Ex. 72. It was determined that DK had bilateral Eustachian tube dysfunction. *Id.* He was referred to his primary care physician. *Id.* Dr. Kaiser ordered a bilateral hearing examination be conducted on DK by an Otorhinolaryngology specialist on May 29, 2018. Plaintiff's Ex. 73. Neither Father nor NH attended the appointments. November Order at 3. On September 19, 2018, DK underwent surgery to correct his bilateral hearing condition. On November 9, 2018, DK was seen at Susquehanna Health for a post-op audiological test. Plaintiff's Ex. 132. The testing indicated normal/near normal hearing. *Id.* A follow up with a primary care physician or otolaryngologist was recommended. *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* at 3-4. At one point in time, NH had expressed her belief that DK's behavior was based on him being autistic like her older son. However, on November 1, 2018, DK was tested for Autism at the Autism & Developmental Medicine Institute (the "Institute"), and a report was generated. Plaintiff's Ex. 131 (Autism & Developmental Medicine Institute at Geisinger-Bucknell Center Outpatient Visit). The report noted that DK was "exhibiting delays across multiple developmental domains including: receptive and expressive language, visual-spatial, fine motor, self-help/adaptive, and social emotional." *Id.* The report also noted that these features would likely continue to evolve and continued developmental surveillance was required. *Id.* While the report did not explicitly state what the cause of DK's developmental delays was, the report stated that DK "does not meet criteria for autism spectrum disorder." *Id.* The report recommended certain laboratory tests/neurodiagnostic studies be performed; however, it noted that the biological parents had not consented to any further medical care, so a court order would be required. *Id.*

NH continued to believe that surgery was not required for DK since she refused to accept that DK suffered from hearing loss.¹³⁸

Karen Schooley (“Ms. Schooley”), a visitation caseworker for the Agency, testified as to her observed visits.¹³⁹ She was specifically concerned about the interaction between NH and MK.¹⁴⁰ She testified that NH rarely smiled at MK, did not greet MK, and sometimes did not even acknowledge him.¹⁴¹ Conversely, NH was noted as doting on DK.¹⁴² Despite Ms. Schooley expressing her concern to NH regarding NH’s disparate treatment of the children, NH responded that she could not be forced to have a relationship with MK.¹⁴³ Ms. Schooley testified that she saw no improvement in the relationship between NH and MK.¹⁴⁴

At the October 9th hearing, Jaclyn Hummer (“Ms. Hummer”), outreach caseworker for the Agency, testified to her observed visits with Father and NH during the review period, noting the difficulty setting up these meetings.¹⁴⁵ Of the two appointments kept during this review period, the July 30, 2018 appointment was for the purpose of addressing the difficulty of setting up said meetings.¹⁴⁶ During this meeting, NH became angry and stated that she no longer wished to work with Outreach. At the second meeting on August 23, 2018, NH became upset when Ms. Hummer expressed

The report also recommended individualized educational programming for DK’s developmental issues, speech and language therapy, occupational therapy, and medical intervention. *Id.* (The report did not recommend psychotropic medication). Finally, the report recommended regular appointments with Dr. Kaiser and a return visit to the Institute within approximately six months. *Id.*

¹³⁸ *Id.* at 4.

¹³⁹ *Id.* Ms. Schooley has been observing visits since they began. *Id.* at 5.

¹⁴⁰ *Id.* at 4.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 4-5.

¹⁴⁴ *Id.* at 5. Ms. Smith testified that MK asked her not to take him to his meetings alone with NH as she was mean and did not play with him. *Id.*

¹⁴⁵ *Id.* at 6.

¹⁴⁶ *Id.* at 6-7.

concern regarding the way NH had previously grabbed MK's wrist.¹⁴⁷ NH stormed out of the meeting—commanding Father to follow her.¹⁴⁸ Ms. Hummer did not believe Father or NH were implementing what they learned from the active parenting program and saw no evidence that NH's interaction with MK improved.¹⁴⁹

Ms. Schooley testified a second time, providing an update on what had occurred since the September 11, 2018 hearing.¹⁵⁰ She noted that NH did attend all visits; however, she continued to be overly critical of MK when she does interact with him during the visits.¹⁵¹ Ms. Schooley also testified that the visits appear as if two families are visiting at the same time.¹⁵² Ms. Schooley also observed MK's visits with TK. TK missed several visits during the reporting period so she was required to call-ahead to notify the Agency that she would be attending the visit.¹⁵³ She missed approximately twenty visits—a fifty percent absent rate.¹⁵⁴

Mrs. Smith also testified during the second day of the hearing.¹⁵⁵ She testified that MK's urination incidents have vastly decreased since the Court ordered that one-on-one visits between NH and MK cease.¹⁵⁶ Mrs. Smith noted that MK enjoys his visits with TK, but is "very disappointed when she does not appear."¹⁵⁷ Mrs. Smith also testified that MK's behavior in school had improved this year.¹⁵⁸ In reference to DK, Mrs. Smith testified that he was doing well after the surgery and there was a "dramatic

¹⁴⁷ *Id.* at 7.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 8.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 9.

and instant change in DK since getting the tubes in his ear.”¹⁵⁹ Additionally, Mrs. Smith noted that MK and DK played together very well and “demonstrate a strong bond.”¹⁶⁰

Ms. Ross testified again as well.¹⁶¹ Ms. Ross testified that TK had been employed at Taco Bell in Schuylkill County during this review period; however, she was arrested on October 5, 2018 in Williamsport, Pennsylvania after an altercation with her boyfriend at his apartment.¹⁶² When the police arrived and asked TK to leave, she retorted, “make me.”¹⁶³ She was charged with criminal trespass, among other charges, and bail was set at \$10,000.¹⁶⁴ Ms. Ross testified that the Agency was still concerned about TK’s abuse of alcohol and drugs based on her current trajectory, even though she had completed drug and alcohol treatment.¹⁶⁵ Ms. Ross also indicated that TK would no longer be provided bus tickets by the Agency since she utilized the bus tickets to travel from Schuylkill County to Lycoming County on two separate occasions, but did not appear for her visits with MK.¹⁶⁶

Ms. Ross testified that Father had maintained the same housing and employment during the review period, but his attitude toward MK has shifted during more recent visits in which he completely ignored MK.¹⁶⁷ Father’s opinion and demeanor of the

¹⁵⁹ *Id.* Mrs. Smith also noted that NH attended DK’s appointment, but was hesitant to proceed with the surgery even after the physician’s assurances. *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 10.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

process appeared to have regressed.¹⁶⁸ Father remained subservient to NH's wishes and does not "defend his son."¹⁶⁹ Regarding NH, the Court found:

NH has made it clear that if [MK] comes home, he will be treated the same way that he was treated. [NH] indicates adamantly that she knows how to parent and that [MK] will be fully medicated. Father has heard [NH] make these statements and has never stood up to her.¹⁷⁰

Ms. Ross is also concerned that the bond which Mr. and Mrs. Smith have fostered between MK and DK will be ruptured if the children were returned to Father and NH's residence, as Father and NH not only fail to encourage the bond, but discourage it during visits.¹⁷¹

NH took the stand next. When asked whether she could explain the significant change in DK since his surgery, she used air quotes to indicate that there "supposedly" was a change yet she did not see any difference with DK during the past two visits.¹⁷² NH further lamented that MK was being spoiled—implying that he was not being appropriately disciplined.¹⁷³ She described MK as a cry baby who is dangerous when he wants to be (NH accused MK of hiding knives and screwdrivers in his bedroom) and loving when he feels like it.¹⁷⁴ The Court reaffirmed the dependency of MK and DK and the Agency's legal and physical custody over MK and DK.¹⁷⁵ In so finding, the Court held:

The Court continues to have significant concerns regarding [NH's] attitude towards [MK]. Her attitude is clearly one of disgust and it is evident that she treats both children significantly different. [NH] has had

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 11.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 13.

no insight whatsoever to how her actions have had an adverse traumatic affect upon [MK]. Though [NH] is much more affectionate and nurturing towards her son, [DK], it is clear that her attitude is also detrimental to her own son. [NH] refuses to believe anyone's advice or input in regard to how her child should be cared [for]. This stands out significantly to the Court when all parties testified how dramatic of a difference in [DK's] hearing there has been since his surgery and [NH] continues to [] refuse to acknowledge it.

In regard to Father, [. . .], the Court has significant concern that [Father] will, at any time, step up and be an advocate for his children. It is clear that he allows [NH] to have complete control in regard to the care of the children, even when it is to their detriment. Though the Court does feel that [Father], on his own with his family's support, could possibly be in a position to provide the care needed for the children, as long as he remains in a relationship with [NH] and defers to her for parenting, the Court does not believe that the children are safe.¹⁷⁶

The Court held that one-on-one visits between NH and MK would not continue; the visits between Father, NH and both children would remain unchanged; and TK's visits would continue while in prison and thereafter.¹⁷⁷ As TK abused the bus pass system, the Court ordered that TK would be responsible for her own transportation.¹⁷⁸

On October 1, 2018, the Agency filed the instant Petitions for Involuntary Termination of Parental Rights. On October 12, 2018, the Agency filed Petitions for Change of Goal to Adoption. The Agency stated that Father, NH, and TK failed to comply with the permanency plan, failed to make progress alleviating the circumstances which necessitated the original placement, and reunification no longer served the needs and welfare of the children.

A pre-trial conference on the Agency's Petitions for Involuntary Termination of Parental Rights was held on October 16, 2018, at which time a schedule for filing pre-

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 14.

¹⁷⁸ *Id.*

trial statements and answers to the petitions was established. The hearing on the involuntary termination of the parental rights was scheduled for December 3, 4, and 12, 2018. On November 9, 2018, notice of the hearing was sent to Father, NH, and TK.¹⁷⁹ At the hearing, testimony was presented consistent with this Court's findings of fact.¹⁸⁰ After testimony was concluded, the guardian ad litem, Ms. Lovecchio, Esq., argued that the best interests of the children called for termination of parental rights. The children's counsel, Ms. Young, Esq., noted that the children's legal interests were not contrary to their best interests and also concurred with the Agency's Request for termination of parental rights.

DISCUSSION

The Agency seeks termination of Father's, NH's, and TK's parental rights under 23 Pa.C.S.A. § 2511(a)(1), (2), (5), and (8). Section 2511(a) states that the right of a parent may be terminated after a petition is filed on one or more 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.

[. . .]

¹⁷⁹ As only TK disputing receiving this notice, the Agency submitted Verification of Service for TK post hearing on December 18, 2018. Attached to the Certification is a registered mail return receipt signed by TK at the St. Clair address she testified to as her residence.

¹⁸⁰ Father and NH did not testify at the involuntary termination hearing.

(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.¹⁸¹

In order to involuntarily terminate Father's, NH's, and TK's parental rights, the Agency must prove by clear and convincing evidence the conduct set forth in *any* of these subsections.¹⁸²

Under § 2511(a)(1), a court may terminate parental rights 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.¹⁸³ When analyzing this issue, the Court is required to “examine the individual circumstances of each and every case and consider all explanations offered by the parent to determine if the evidence in light of the totality of the circumstances clearly warrants the involuntary termination.”¹⁸⁴

Regarding parental duties, the Pennsylvania Supreme Court has opined:

¹⁸¹ 25 Pa.C.S.A. § 2511(a)(1), (2), (5), (8).

¹⁸² *In re G.P.R.*, 851 A.2d 967, 973 (Pa. Super. Ct. 2004) (quoting *In re A.L.D.*, 797 A.2d 326, 336 (Pa. Super. Ct. 2002).

¹⁸³ *In re C.S.*, 761 A.2d 1197 (Pa. Super. Ct. 2000).

¹⁸⁴ *Id.* (quoting *Matter of Adoption of Charles E.D.M. II*, 708 A.2d 88, 91 (Pa. 1998)).

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.”¹⁸⁵

The Pennsylvania Superior Court has further elaborated on the duties of a parent:

Parental duty requires that the parent act affirmatively with good faith interest and effort, and not yield to every problem, in order to maintain the parent-child relationship to the best of his or her ability, even in difficult circumstances. A parent must utilize all available resources to preserve the parental relationship, and must exercise reasonable firmness in resisting obstacles placed in the path of maintaining the parent-child relationship. Parental rights are not preserved by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with his or her physical and emotional needs.¹⁸⁶

Importantly, while the incarceration of a parent does not establish a *prima facie* ground for termination of parental rights, the “parent’s responsibilities are not tolled during incarceration.”¹⁸⁷

Pursuant to § 2511(a)(2), the Agency must prove:

(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

¹⁸⁵ *In re B.N.M.*, 856 A.2d 847, 855 (Pa. Super. Ct. 2004) (quoting *In re C.M.S.*, 832 A.2d 457, 462 (Pa. Super. Ct. 2003)).

¹⁸⁶ *Id.* (internal citations omitted).

¹⁸⁷ *In re B.N.M.*, 856 A.2d at 855.

or mental well-being; and (3) the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.¹⁸⁸

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.”¹⁸⁹

Vital to the present case, the Pennsylvania Superior Court has stated:

[A]n agency is not required to provide services indefinitely if a parent is either unable or unwilling to apply the instruction given. The goal of intervention is to rehabilitate the family and reunite the child with his family, or to terminate parental rights and free the child for adoption, if reasonable efforts over an appropriate period of time have failed. Therefore, CYS' duties must have reasonable limits. “If a parent fails to cooperate or appears incapable of benefiting from reasonable efforts supplied over a realistic period of time, the agency has fulfilled its mandate and upon proof of satisfaction of the reasonable good faith effort, the termination petition may be granted.”¹⁹⁰

Moreover, the Superior Court has noted,

[A]dequate parenting requires “action as well as intent.” “Parents are required to make diligent efforts toward the reasonably prompt assumption of full parental responsibilities.” Although the Commonwealth is willing to take on the obligation “to help parents assume their irreducible minimum parental responsibilities,” that obligation “is not indefinite nor has the Commonwealth made itself guarantor of the success of the efforts to help parents assume their parental duties.” Thus, 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.¹⁹¹

In the present case, the Court finds that the Agency has established by clear and convincing evidence that Father and NH are in violation of § 2511(a)(1), (2), (5), and (8), and TK is in violation of § 2511(a)(1) and (2). Under § 2511(a)(1) and (2), Father, NH, and TK have clearly failed to utilize all available

¹⁸⁸ *In re Adoption of M.E.P.*, 825 A.2d 1266, 1272 (Pa. Super. Ct. 2003).

¹⁸⁹ *In re A.L.D.*, 797 A.2d 326, 337 (Pa. Super. Ct. 2002) (citations omitted).

¹⁹⁰ *Id.* at 340 (internal citations omitted).

¹⁹¹ *Id.* (internal citations omitted).

resources to maintain a relationship with MK or DK. While Father and NH showed initial interest in bettering themselves through classes and resources provided to them by the county, that interest was fleeting. Despite more than a year lapsing, all three parents have shown insufficient improvement. During visitation, Father continues to not stand up for his children despite NH's abusive or neglectful attitude and actions, and NH continues to ignore MK and DK's medical needs. In fact, Father, NH, and TK appear fed up with the involvement of the Agency and believe they do not need any help in raising the children. Father has stated that if MK and DK are returned to them, he will continue to work and allow NH to have the final word in how the children are raised. NH has stated that she would utilize the exact same techniques as before—including padlocks on the outside of bedroom doors—for dealing with MK and DK. Granted, she has stated that if she was able to increase MK's medication to curb his "outbursts" then she would not lock him in his room. However, even if the Court found her testimony credible, overmedication is not a viable alternative.

The Court is also concerned with both Father's and NH's belief that the Smiths are spoiling MK and DK. Father's and NH's indifference to the improvements in MK's and DK's life since being placed in the Smiths' household supports the Court's belief that Father and NH will return once again to their old ways of discipline if the children are returned to their care. In fact, despite witnessing said improvements, NH continues to blame DK's inability to hear on the Smiths. And, even though NH has not shown the same disdain for DK as MK,

NH continues to ignore DK's basic needs based on her own twisted sense of right and wrong.

Similarly, TK also has failed to implement the training and resources provided to her. She has refused to attend a majority of her appointments or visits with MK. She even abused "free" bus tickets she was offered by utilizing them and not visiting MK. Further, TK continues to lack an appropriate residence. Indeed, she blamed her housing predicament for why she could not attend these involuntary termination proceedings. Despite staying with an old boyfriend, only a few blocks from the courthouse, she informed the Court telephonically that she would be locked out of the apartment if she left while her boyfriend was downstairs at his job. When asked why she did not just go downstairs and ask her boyfriend for the keys, or inform him that she was leaving, she stated that she did not want to disturb him while he was working. TK's lack of concern over the involuntary termination proceedings is troubling, especially when she is facing similar circumstances with her children in Schuylkill County. Yet, despite the seriousness of these proceedings, TK informed the Court on the third day of hearings that she too was fed up with the whole process and simply wanted the process to end. TK ultimately testified that MK was better off with the Smiths, as TK did not want NH raising her child and TK did not possess suitable housing in Lycoming County.

The Court finds that Father, NH, and TK have exhibited "a merely passive interest in the development of the child[ren]" and not a "positive duty which requires affirmative performance." The Court finds that Father, NH, and TK have

failed to perform their parental duties for a period of at least six months immediately preceding the filing of the petitions pursuant to § 2511(a)(1). The Court further finds that Father's, NH's and TK's failure to remedy their own neglect as parents has been sufficiently proven by clear and convincing evidence pursuant to § 2511(a)(2).¹⁹²

As the Court has found that statutory grounds for termination have been met under both subsections of § 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.¹⁹³

Further, prior to termination, and in considering the needs and welfare of the child,

[I]t 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 child[ren]'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.”¹⁹⁴

¹⁹² While the Agency is only required to prove one ground under § 2511(a), the facts above are sufficient to support the Agency's grounds for termination under § 2511(a)(5) and (8) as well.

¹⁹³ 23 Pa.C.S.A. § 2511(b).

¹⁹⁴ *In re C.S.*, 761 A.2d at 1202 (quoting *In re Bowman*, 647 A.2d 217, 219 (Pa. Super. Ct. 1994), *aff'd by an equally divided court*, 542 Pa. 268, 666 A.2d 274 (1995)).

A bonding assessment was requested by the Agency in connection with the instant petitions. On September 13, 2018, an assessment of NH was conducted by Bruce Anderson, M.A., Licensed Psychologist (“Mr. Anderson”).¹⁹⁵ On September 25, 2018, Mr. Anderson also assessed Father and TK.¹⁹⁶ And, on October 4, 2018, Mr. Anderson assessed the resource family, Mr. and Mrs. Smith.¹⁹⁷

Mr. Anderson’s assessments are consistent with his testimony at the involuntary termination hearing. During the hearing, Mr. Anderson testified that after interviews and attendance at visits he would recommend that parental rights be terminated. Mr. Anderson found MK and DK to be closely emotionally bonded with Mr. and Mrs. Smith and to remove them at this point from the Smith’s home would be detrimental to the children’s’ welfare. He also recommended that the Agency assist Mr. and Mrs. Smith in adopting MK and DK if parental rights are terminated.

Mr. Anderson testified that only Father has accepted responsibility for allowing the children to be locked in their bedrooms. And while Father is emotional bonded with both boys, Father stated that he would still abide by NH’s decisions regarding care of the children. Regarding NH, Mr. Anderson found her to be only bonded with her own child, DK, but unwilling to place the needs of DK above her own preconceived notions of his practical and medical needs. Regarding TK, Mr. Anderson found MK to enjoy seeing TK as a playmate, but her lack of involvement in his life for three years prior to his removal from Father’s and NH’s residence resulted in a lacking bond. Mr. Anderson was also concerned about TK’s continuing struggle with alcohol and drugs.

¹⁹⁵ Plaintiff’s Ex. 126. Mr. Anderson was offered as an expert during the involuntary termination hearing and accepted with no objection.

¹⁹⁶ Plaintiff’s Exs. 94 & 109.

¹⁹⁷ Plaintiff’s Ex. 128.

The Court agrees with Mr. Anderson's assessments. At the involuntary termination hearing, Mrs. Smith testified that MK's current interactions have drastically improved since he has been in her home.¹⁹⁸ He has bonded well with her other three children and now has a normal sibling relationship with DK. In the past couple of months, MK has even taken great strides to care for DK. In fact, MK now introduces DK as his brother. MK also refers to the Smiths as "Mom" and "Dad," and is thriving at home. MK was also enrolled in Jackson Primary School and has improved over his two years of attendance.¹⁹⁹

Mrs. Smith testified that DK has formed a strong bond with MK since residing in her home and will hold hands with his brother if watching television or traveling in the car. Mrs. Smith also noted that when DK first arrived at her home he did not interact much with anyone or anything. However, DK is now reacting in an age appropriate way and showing a greater interest in his own movement, such as catching and throwing, and is more interested in books during story time. DK also—through speech and occupational therapy—learned sign language at Mrs. Smith's behest and, eventually, learned to consistently speak approximately thirty words. DK has also shown a stark improvement since undergoing surgery to remove fluid from his ears. He now enjoys music and reacts in normal time to sounds. Finally, Mrs. Smith testified that her and her husband were willing to adopt MK and DK if parental rights were terminated.

¹⁹⁸ Part of the children's improvements have been based on the Smiths' attentiveness to their needs. See, e.g., Plaintiff's Exs. 71 (STEP Head State Screening Evaluation re: DK), 65 (Jackson Primary School's Health Program Vision Test re: MK), & 66 (Eye Specialist Report re: MK).

¹⁹⁹ Compare Plaintiff's Ex. 135 (MK's Report Card for 2017 – 2018) with Plaintiff's Ex. 136 (MK's Report Card for 2018 – 2019). MK began attending Jackson Primary School in October 2017.

While Father, NH, and TK state that they love their children, a parent's own feelings of love and affection for a child do not prevent termination of parental rights.²⁰⁰ The Court must consider what would best serve the children's needs and welfare, not what effect the termination would have on the parents. MK and DK are in a loving and stable home and their lives have been immensely improved by Mr. and Mrs. Smith. The children are clearly bonded with the resource parents, who are willing to offer them permanency. Breaking *that bond would* be detrimental. The Court is therefore satisfied that termination is in the best interests of the children.

CONCLUSIONS OF LAW

1. The Court finds that the Agency has established by clear and convincing evidence that Father, NH, and TK, 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.A. § 2511(a)(1);

2. The Court finds that the Agency has established by clear and convincing evidence that Father, NH, and TK 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 him, pursuant to 23 Pa.C.S.A. § 2511(a)(2);

3. The Court finds that the Agency has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of the

²⁰⁰ See generally *In re: L.M.*, 923 A.2d 505 (Pa. Super. Ct. 2007).

children will be best served by the termination of Father's, NH's, and TK's parental rights pursuant to 23 Pa.C.S.A. § 2511(b); and

4. The Court finds that the placement plan goal will be changed from reunification to adoption.

Accordingly, the Court will enter the attached Decree.

By the Court,

Eric R. Linhardt, Judge

cc: John Pietrovito, Esq.
Dance Drier, Esq.
Jennifer Ayers, Esq.
Ryan Gardner, Esq.
Meghan Young, Esq.
Angela Lovecchio, Esq.
CASA
Gary Weber, Esq. (Lycoming Reporter)

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: : NOs. 6617, 6618 ADOPTION
: :
M.K. & D.K., : :
: :
minor children, : ORPHANS' COURT DIVISION

DECREE

AND NOW, this day of January 2019, after a hearing on the Petitions for Involuntary Termination of the Parental Rights of Father, NH, and TK, held on December 3, 4 and 12, 2018, it is hereby ORDERED and DECREED:

- (1) That the parental rights of Father, NH, and TK 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 or mothers.

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

By the Court,

Eric R. Linhardt, Judge

cc: John Pietrovito, Esq.
Dance Drier, Esq.
Jennifer Ayers, Esq.
Ryan Gardner, Esq.
Meghan Young, Esq.
Angela Lovecchio, Esq.
CASA
Gary Weber, Esq. (Lycoming Reporter)