

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

IN RE:	:	NO. 6648
	:	
JM1 and	:	
JM2,	:	
Minor children	:	

OPINION AND ORDER

AND NOW, this 26th day of **March, 2020**, before the Court is Lycoming County Children & Youth Services' ("Agency") Petition for Involuntary Termination of Parental Rights of CAM ("Mother") and JL ("Father"), filed on July 1, 2019, with regard to JM1 ("JM1") and JM2 ("JM2") (collectively, "Children"). A hearing on the Petition for Involuntary Termination of Parental Rights was held on February 12, 2020. Mother was present and represented by Dance Drier, Esquire. Father was not present for the hearing. His counsel, Tiffani Kase, Esquire, participated by telephone. John Pietrovito, Esquire, Solicitor for the Agency, Angela Lovecchio, Esquire, Guardian Ad Litem, and W. Jeffrey Yates, Esquire, counsel for the Children, were also present at the hearing.

The Court notes that at the time the hearing on the Petition for Involuntary Termination of Parental Rights was to commence, Father was hospitalized for psychiatric treatment. The Court heard testimony from Heidi Porter, ongoing caseworker for the Agency, and Brian Krah, Father's mental health caseworker, regarding whether Father would be able to meaningfully participate in the termination hearing. Both Ms. Porter and Mr. Krah testified that Father had a stroke several years ago as a result of drug use, and also suffers from schizophrenia. Ms. Porter testified that her last contact

with Father occurred on January 13, 2020, when she and Mr. Krah met with Father at the Lycoming-Clinton Joinder Board office. Ms. Porter provided Father with the date of the upcoming hearing on the proposed termination of his parental rights. She testified that Father asked what the hearing was for and stated that he already had custody of the children. Mr. Krah testified that on January 22, 2020, he had Father involuntarily committed for mental health treatment. He further testified that he is unable to have meaningful conversations with Father, and when Father is distressed he gets highly agitated and it is even more difficult to effectively communicate with him. Mr. Krah opined that Father's impairments will likely never resolve to the point where he can be a caretaker for the Children.

This Court ascertained the opinion of counsel for Mother, counsel for Father, counsel for the Agency, counsel for the Children, and the Guardian Ad Litem regarding whether the hearing could be held in Father's absence. With the exception of counsel for Mother, who stated his belief that all parties should be present for the hearing, all other counsel agreed that the Court should move forward with the termination hearing on February 12, 2020. This Court weighed Father's right to be present at the hearing against the Children's need for permanency and after careful consideration, the Court was satisfied that every precaution possible was taken to protect Father's rights. The Court further determines that even if present, Father has no present ability to effectively communicate with his counsel or provide testimony in this matter. The Court also finds that Father's inability to do so will not change in the future. The Court, therefore proceeded with the hearing on the Agency's Petition for Involuntary Termination of Parental Rights in Father's absence.

Findings of Fact

JM1 (DOB: 6/27/08) and JM2 (DOB: 1/31/11) are the children of CAM (DOB: 12/21/73) and JL (DOB: 8/20/80). Mother and Father were not married at the time of the Children's births.

The Agency became involved on October 31, 2018, when it received a report that Mother was suspected to be high with the Children in her home. Mother has a history of drug abuse and has admitted to using cocaine. The Agency went to the home and the Children appeared to be safe; however, later that night Mother left the house with her boyfriend's truck and did not return home. JM1 left the house and walked two miles to her grandmother's house while JM2 stayed at the home with Mother's boyfriend. Neither the grandmother nor Mother's boyfriend were willing to care for the Children. The Agency was granted emergency custody of the Children on November 1, 2018, while they continued to attempt to locate Mother and Father. (Ex. A1, A2, A3, A4).

A Shelter Care hearing was held on November 2, 2018, at which time sufficient evidence was presented to prove that return of the Children to either parent was not in the best interest of the Children. Mother did not attend the hearing as she was unable to be located. Father attended the hearing and wanted custody of the Children; however, his request was denied because he had not seen the Children for at least 3 years, and he has an indicated report of sexual abuse against JM1. Legal and physical custody of the Children remained with the Agency. The Children were placed with CW and BW, who had custody of the Children off and on for several years. Father was to have no visitation with the Children until a psychological evaluation was completed to determine if contact with Father would be harmful to the Children, and under what circumstances the contact should occur. (Ex. A7, A8).

Dependency Petitions, as well as Motions for Finding of Aggravated

Circumstances against Father were filed on November 5, 2018. A hearing was held on November 13, 2018, at which time the Children were found, by clear and convincing evidence, to be without proper parental care or control necessary for their physical, mental, or emotional health, and that allowing the Children to remain in the home would be contrary to their welfare. Father attended the hearing but Mother did not. The Children were adjudicated dependent and legal and physical custody remained with the Agency with continued placement in the kinship home of BW and CW. Mother was permitted to have supervised visitation one time per week at the Agency. Father was to have no visitation with the Children until a psychological evaluation was conducted to determine whether such contact would be harmful to the Children and under what circumstances (if any) the visitation should occur. (Ex. A13, A14). Additionally, on November 13, 2018, the Family Court Hearing Officer found that clear and convincing evidence had been presented to establish that the alleged aggravated circumstances existed as to Father in that he has an indicated report of sexual abuse against JM1. (Ex. A16).

On December 6, 2018, this Court granted a Motion for Modification of Child's Placement filed by the Agency due to allegations of JM1's concerning behaviors of aggression and threats towards JM2 and her caregivers. At the time, JM1 was admitted to the Meadows and the W kinship home was not willing to allow her to return upon her release. The Child was placed in foster care as the Court found there was no less restrictive alternative available. (Ex. A18). On January 4, 2019, this Court granted an Emergency Motion for Modification of Child's Placement filed by the Agency due to BW and CW's request that JM2 be removed from their home due to her "disrespectful,

aggressive, and disruptive” behaviors. Pursuant to the Court order, JM2 was placed in foster care at the Barbee resource home, as there were no less restrictive placements available. (Ex. A.19, A20).

A permanency review hearing was held on February 5, 2019. Both Mother and Father attended. The Court noted that there had been no compliance by either Mother or Father with the permanency plan. Mother had limited contact with the Agency and had not visited with the Children during the review period. Father had limited contact with the Agency during the review period. Father did not have visitation with the Children pursuant to the Court order and the recommendation of Bruce Anderson, Licensed Psychologist under contract with the Agency, who performed a psychological evaluation of Father on November 21, 2018. (Ex. A44). The Court found that neither parent had made progress towards alleviating the circumstances which necessitated the original placement. Mother had not addressed her drug and alcohol issues or her mental health concerns. Following the hearing, the Court reaffirmed dependency and the Children remained in the legal and physical custody of the Agency with continued placement in their current resource homes. (Ex. A22, A23).

On March 18, 2019, this Court granted a Motion for Modification of Child’s Placement filed by the Agency with regard to JM1, who was admitted to First Hospital on February 8, 2019. JM1 was placed in Diagnostic Placement at Silver Springs RTF pursuant to the recommendation of the treatment facility. The Court found that the placement was the least restrictive placement that met the needs of the JM1. (Ex. A24, A25).

On May 8, 2019, the Agency filed a Motion for Finding of Aggravated Circumstances as to Mother, alleging that Mother failed to maintain substantial and

continuing contact with the Children for a period of six months. (Ex. A27, A28). A permanency review hearing was held on May 24, 2019. Father attended but Mother did not. The Court found that there had been no compliance by Mother with the permanency plan. Mother did not visit the Children, was not in contact with the Agency, and did not attend the Children's medical appointments. Father had only minimal compliance with the permanency plan, in that he did have limited contact with the Agency during the review period but had not had contact with the Children pursuant to the recommendation of Bruce Anderson, Licensed Psychologist. The Court further found that neither Mother nor Father had made any progress towards alleviating the circumstances which necessitated the original placement. Mother was not visiting with the Children, had no contact with the Agency, and was not participating in any services. Additionally, the Court found that during this review period, Mother was incarcerated briefly during the review period and had also voluntarily committed herself to the Meadows. Mother sent one letter to JM2 at her resource home. After the hearing, the Court reaffirmed dependency and the Children remained in the legal and physical custody of the Agency with continued placement of JM1 in a residential treatment facility and JM2 in her current resource home. (Ex. A29, A30). With regard to the Agency's Motion for Finding of Aggravated Circumstances, the Court found that clear and convincing evidence was presented that Mother failed to maintain substantial and continuing contact with the Children for a period of six months and therefore granted the Motion. (Ex. A31, 32).

The Agency filed the Petition for Involuntary Termination of Parental Rights on July 1, 2019, alleging grounds for termination existed pursuant to 23 Pa.C.S. §2511(a)(1), (2), and (5). The Agency argues that the termination of parental rights will

benefit the Children's developmental, physical, and emotional needs in that the Children would be able to move forward in therapy and have closure. It would allow the Agency to locate adoptive homes that can manage each child's individual needs. The Agency indicated that the Children desire permanency and the parents cannot provide proper care or control of the Children.

A permanency review hearing was held on July 16, 2019. Father attended but Mother did not attend. The Court found that there had been no compliance with the permanency plan in that Mother had only recently had contact with the Agency and that was only because the caseworker visited with Mother while she was incarcerated at the Lycoming County Pre-Release Center. Mother had no further contact with the Agency and had no contact with the Children during this review period. Father had no contact with the Agency or the Children during this review period. Neither Mother nor Father had made progress towards alleviating the circumstances which necessitated the original placement. The Court noted that Mother was released from incarceration on July 11, 2019, to the Saving Grace Shelter and that she had a West Branch evaluation scheduled for July 12, 2019, but it was unknown if she followed through with the evaluation because she had no contact with the Agency since her release and had not signed any releases for the Agency to obtain information from any treatment providers. Although Mother had a scheduled visitation with the Children every Tuesday, she had never taken advantage of that time. Because she had almost no contact with the Agency since the Children were placed in its custody, had not met any of her goals, had not sought any treatment, and had not attended any court hearings, the Court granted the Agency's request to terminate the scheduled visits. The Court reaffirmed dependency and the Children remained in the legal and physical custody of the Agency

with continued placement of JM1 in a residential treatment facility and JM2 in her current resource home. (Ex. A57, A58).

A hearing on the Petition for Involuntary Termination of Parental Rights was scheduled for September 4, 2019. However, at the time the hearing was scheduled to commence, it was noted that Father was inpatient in Divine Providence Behavior Health Unit under an involuntary commitment. Additionally, W. Jeffrey Yates, Esquire, counsel for the Children, had not spoken to JM1 and could not advise the Court of her position with regard to the termination of Mother and Father's parental rights. In light of these facts, the hearing on the Petition for Involuntary Termination of Parental Rights was continued until December 5, 2019.

A permanency review hearing was held on November 4, 2019. Mother was successfully discharged from Cove Forge Treatment Center on this day and attended the hearing in person. Father was present at the hearing. Also present were BW and CW and their counsel, Ann Targonski, Esquire. The W's presented a court Order from Northumberland County dated October 16, 2018, granting them physical and legal custody of the Children, and requested standing to be part of the dependency matter in this case. However, the Court noted that the W's had returned the Children to Mother's custody prior to them being removed by the Agency. The Agency had placed the Children with the W's, and less than two months later they had requested that both Children be removed from their home. At no time during the dependency case did the W's provide the Agency with a copy of the custody order. In light of the fact that the Children were removed from Mother's physical custody, the Court found that the W's did not have standing in the dependency matter.

The Court noted that Mother entered White Deer Rehab Facility on

August 16, 2019, and then went to Cove Forge where she was successfully discharged. She completed a parenting program while at White Deer. She indicated that she was back in her home on Yale Avenue with her paramour, AM. She further indicated that she would be attending a partial program five days a week and attending seven NA meetings per week. She was to be receiving trauma therapy and obtaining a sponsor. As she was focused on her recovery, Mother testified that she had no immediate plans for employment. Mother requested that she be granted periods of visitation with the Children; however, due to the fact that the Court had terminated visitation at the last review hearing as a result of Mother's total lack of attendance, this request was denied. Mother was permitted to participate in a bonding assessment with the Children. The Court reaffirmed dependency and the Children remained in the legal and physical custody of the Agency with continued placement of JM1 in a residential treatment facility and JM2 in her current resource home. (Ex. A50, A51).

By Order dated November 19, 2019, the Court granted the Guardian Ad Litem's request for a bonding assessment between Mother and the Children. Said assessment was to be completed by Dr. Denise Feger, and the Court directed that Mother be part of the evaluation to whatever extent Dr. Feger believed necessary for her to complete a thorough evaluation weighed against the best interest of the Children, given the fact that Mother had not had contact with the Children since they were placed in the legal and physical custody of the Agency. The hearing on the Termination of Parental Rights was continued until February 12, 2020, in order to allow sufficient time for the bonding evaluations to occur.

Discussion

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

§2511. Grounds for Involuntary Termination

(a) GENERAL RULE.--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

- (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.
- (2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.
- (5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

In order to involuntarily terminate Mother's and Father's parental rights, the Agency must prove by clear and convincing evidence one of the above subsections of 23 Pa.C.S. §2511(a).

A court may terminate parental rights under Section 2511(a)(1) where a parent demonstrates a settled purpose to relinquish parental claim to a child or fails to perform parental duties for at least six months prior to the filing of the termination petition. **In the Interest of C.S.**, 761 A.2d 1197, 1201 (Pa. Super. 2000) (emphasis added). The Court should consider the entire background of the case and not simply:

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

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

A parent has an affirmative duty to be an active participant in a child's life. 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). This Court finds that neither Mother nor Father performed any parental duties for the Children for a period well in excess of six months prior to the filing of the Petition for Involuntary Termination of Parental Rights. Father had not seen the Children for several years prior to the filing

of the Petition, and was not permitted to have visitation with them pursuant to the Court Order entered upon the recommendation of the licensed psychologist who performed an evaluation on Father. Mother was scheduled for visitation with the Children once per week and never attended, resulting in the Court granting the Agency's request to terminate those visits. Since the Children were placed in the legal and physical custody of the Agency in November of 2018, neither Mother nor Father provided the Children with basic necessities such as food, clothing, or shelter. Furthermore, neither Mother nor Father attended any medical appointments or school conferences for the Children. Neither Mother nor Father provided comfort to the Children when they were sick or scared. Mother and Father both utterly failed to perform any parental duties for the entire duration of the time their Children have been in placement. They put forth no efforts to maintain a place of importance in the Children's lives. The Court hereby finds that the Agency has proven by clear and convincing evidence that both Mother and Father have failed to perform parental duties for at least 6 months prior to the filing of the Petition for Involuntary Termination of Parental Rights pursuant to 23 Pa.C.S. §2511(a)(1).

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

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

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

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

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

With regard to Father, the Court noted at each permanency review hearing that no progress had been made towards alleviating the circumstances which necessitated placement. Father is an indicated perpetrator of sexual abuse against JM1 and had no contact with the Children for several years prior to them being removed from Mother’s home. Additionally, Father struggles with severe mental health conditions as well as physical effects from a stroke he had several years ago as a result of drug abuse. Both Ms. Porter and Mr. Krah, as well as Father’s appointed counsel, testified that they are unable to have meaningful conversations with Father. Father has had several inpatient mental health hospitalizations, and has not been in a position to care for his Children since they were placed in the custody of the Agency in November of 2018. Based on Father’s history, the Court has concerns about his ability to properly care for himself and finds that it is unlikely that he would be able to meaningfully participate in and complete any programs and services suggested by the Agency to enable him to care for his Children. This Court is satisfied that the Agency has

proven by clear and convincing evidence that grounds for termination pursuant to 23 Pa.C.S. §2511(a)(2) in that Father's incapacities have caused the Children to be without essential parental care or control and the causes of these incapacities will not be able to be remedied in the future.

With regard to Mother, the Children had been returned to her care by BW and CW for only a few days before she chose to go out and get high and drunk because she was "exhausted and frustrated," a decision which ultimately resulted in the removal of the Children by the Agency. From November 8, 2018, to May 8, 2019, Mother had no contact with the Agency because "it was a dark period and she was tired of fighting." Mother further testified that she was on a "suicide mission" from when the Children were first placed until Ms. Porter made contact with her in June of 2019 because she viewed their placement with the Ws as a continuation of a custody battle she had been through with them in 2017. Despite being given notice by both her prior caseworker, Judy Deacon, and her current caseworker, Ms. Porter, of her scheduled weekly visitation, Mother attended no visits with the Children, and her lack of participation finally resulted in the Agency requesting - and this Court granting - that the scheduled visits be terminated.

Mother was incarcerated in May of 2019. On June 18, 2019, Ms. Porter was notified that Mother was at the Lycoming County Pre-Release Center. She met with Mother on June 27, 2019, at the Pre-Release Center. Ms. Porter testified that Mother did request visits at that time but the Agency deferred a decision until the matter could be raised at the next permanency review hearing. Mother was released from the Pre-Release Center on July 11, 2019. Mother

failed to appear at the permanency review hearing on July 16, 2019, because she was “back to doing what I was doing (drinking).”

At the hearing on the Petition for Involuntary Termination of Parental Rights, Mother testified that being incarcerated in May of 2019 was “a rescue,” and that she was “fighting monsters” the previous year and “the system was not helping” her. Mother did attempt to address her drug and alcohol abuse issues in August of 2019, when she spent 40 days at White Deer Run and was transferred to Cove Forge until she was successfully discharged on November 4, 2019. Mother attended the permanency review hearing on that date, and saw the Children in the hallway outside the courtroom for approximately 5 minutes. Following her release from rehab, Mother was referred for medically assisted treatment and was placed in the partial program at Crossroads Counseling. Despite several requests from Ms. Porter to sign a release, Mother never did and the Agency was unable to verify her participation in the program. However, when Mother appeared at the Agency in January, she reported to Ms. Porter that she was no longer in the partial program and that her anxiety and depression were at a high level, she could not handle medically assisted treatment, and she was actively using marijuana.

Mother testified that she and the Children need another chance to be together and that she would do “anything.” However, this Court has serious concerns about Mother’s willingness and ability to put in the effort necessary to be reunified with her Children. Perhaps most concerning to the Court is that not only did Mother discontinue her participation in the partial program, but also the fact that she submitted to a drug test at her hearing on the Petition for Involuntary

Termination of Parental Rights, which showed positive result for THC and cocaine. When questioned by the Guardian Ad Litem, Mother admitted to smoking crack the Friday before the hearing and indicated that she “did not know why she did it but she is 90% better than she was before she went to rehab.”

Mother’s drug addiction is an incapacity which caused the Children to be without proper parental care and control. Mother’s drug addiction and mental health issues also caused Mother be either unable or unwilling to take the steps necessary to be reunited with the Children. Given Mother’s failure to take advantage of visitation with the Children and participate in services which would aid in her recovery, this Court is unwilling to further delay the Children’s permanency based on Mother’s promise that she is now willing to do “anything” necessary to have the Children returned to her. The Court finds by clear and convincing evidence that the Agency has fulfilled 23 Pa.C.S. §2511(a)(2) by demonstrating Father’s and Mother’s repeated and continued incapacity has caused the Children to be without essential parental control or subsistence necessary for their physical and mental well-being.

“Termination of parental rights under Section 2511(a)(5) requires that: (1) the child has been removed from parental care for at least six months; (2) the conditions which led to removal and placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child.” **In re: K.J.**, 936 A.2d 1128, 1134 (Pa. Super. 2007). As Father was not in a position to be a resource for the Children at the time of their removal from Mother’s home, and has continued to struggle with mental health, stable housing, and steady income for the duration of the time the Children have been in

placement, he has been unable to rectify the conditions which necessitated the Children's placement. Additionally, Father is an indicted perpetrator of sexual abuse against JM1, which resulted in Father being unable to be a resource for the Children for several years prior to them being removed from Mother's care.

With regard to Mother, the Children have been removed from her custody since November 1, 2018. Ms. Porter testified that the goals for Mother throughout the time her Children were in the custody of the Agency were to (1) stabilize the Children's school attendance, (2) develop structure and routine in the home, (3) address mental health concerns, and (4) receive appropriate substance abuse treatment. At each permanency review hearing, the Court found that Mother had not complied with the permanency plan and had made no progress towards alleviating the conditions which necessitated the original placement. "When a child is in foster care, this affirmative duty requires the parent to work towards the return of the child by cooperating with the Agency to obtain rehabilitative services necessary for them to be capable of performing their parental duties and responsibilities." **In re: G.P.-R.**, 851 A.2d 967, 977 (Pa.Super. 2004).

Throughout the time the Children have been in placement, Mother had many opportunities to take advantage of programs and services that would enable her to address her drug addiction and assist her in regaining her ability to properly parent the Children. Mother failed to take advantage of these services and, as a result, the conditions which led to the removal of the Children continue to exist.

Mother's and Father's inability to provide the Children with food, clothing, or a safe, stable home free from the effects of substance abuse has not been rectified since the Children were placed in the legal and physical custody of the

Agency. JM2 has received those basic necessities from her foster parent and JM1 has received those necessities at her residential treatment facility. While each of the Children has made progress in terms of behavior and school attendance, it is clear that they have a long road ahead of them in receiving treatment for the trauma they have endured. The Children deserve stability and it is clear to this Court that termination of Mother's and Father's parental rights would best serve their needs and welfare.

As the Court has found that statutory grounds for termination have been met under all three subsections of 23 Pa. C.S. §2511(a) contained in the Petition for Involuntary Termination of Parental Rights, the Court must now consider the following:

23 Pa.C.S. § 2511(b) OTHER CONSIDERATIONS.—The Court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

Before granting a petition to terminate parental rights,

“it is imperative that a trial court carefully consider the *intangible* dimension of the needs and welfare of a child--the love, comfort, security and closeness--entailed in a parent-child relationship, as well as the tangible dimension. Continuity of relationships is also important to a child, for whom severance of close parental ties is usually extremely painful. The trial court, in considering what situation would best serve the children's needs and welfare, must examine the status of the natural parental bond to consider whether terminating the natural parents' rights would destroy something in existence that is necessary and beneficial.”

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

When conducting a bonding analysis, the Court is not required to use expert testimony. **In re: K.K.R.-S.**, 958 A.2d 529, 533 (Pa. Super. 2008) (citing **In re: I.A.C.**, 897 A.2d 1200, 1208-1209 (Pa. Super. 2006)). “Above all else . . . adequate consideration must be given to the needs and welfare of the child.” **In re: J.D.W.M.**, 810 A.2d 688, 690 (Pa. Super. 2002). This Court did not require expert testimony with regard to Father nor did it order that a bonding assessment be conducted between Father and the Children. Father had no contact with the Children for several years prior to their removal from Mother’s home. He was an indicated perpetrator of sexual abuse against JM1. Father’s mental health diagnoses and drug abuse history have left him unable to meaningfully communicate with others and without the protective capacity to care for the Children. This Court finds that there is currently no bond between Father and the Children and their developmental, physical, and emotional needs and welfare will not be adversely affected by the termination of Father’s parental rights.

Upon motion of the Guardian Ad Litem, the Court ordered that a bonding assessment be conducted between Mother and the Children to determine (1) if a bond existed and (2) whether that bond constitutes a necessary and beneficial relationship. Denise Feger, Vice President of Operations at Crossroads Counseling, Inc., performed an assessment on JM1 on January 30, 2020, at her residential treatment facility in the presence of her therapist. Dr. Feger made the professional decision to not conduct the evaluation with JM1 and Mother together because of the lack of communication between the two of them throughout the dependency proceedings. Dr. Feger felt it would not have been ethical to expose JM1 to Mother without any period of transition/reintroduction. Dr. Feger testified that JM1 has a moderately high level of resentment towards Mother and struggles to cope with this anger. It took several

prompts to get JM1 to engage in conversations about her relationship with Mother. JM1 has a history of engaging in acts of self-harm, has angry outbursts which result in her being restrained, and afterwards tends to disengage in the therapeutic process.

At the hearing on the Petition for Involuntary Termination of Parental Rights, Dr. Feger was qualified as an expert in the area of assessing parent/child relationships and protective capacities. Dr. Feger testified that a bond does exist between JM1 and Mother, but it is “fragmented” by traumatic experiences that have occurred. According to Dr. Feger, a “fragmented bond” occurs when a child no longer relies on a parent as a primary caregiver. JM1 expresses anger and sadness over Mother’s inability to provide her with safety and security and, according to Dr. Feger, has become detached from the typical parent/child relationship. JM1’s needs are greater than those of a typically functioning child and Mother has proven to be unable to take care of herself let alone be a consistent and reliable primary caregiver for the Children. Mother’s history of being unable to provide the Children with a safe, stable home where they are nurtured and supported has led to JM1’s distrust of Mother and her inability to rely on her as a primary caregiver. Further, JM1 has experienced difficulties forming attachments with others and has exhibited symptoms consistent with attachment disorder.

Although there may be a bond between Mother and JM1, the bond is fragmented and unhealthy. Mother has done very little since JM1 entered her residential treatment facility to repair the bond. There has been no effort on the part of Mother to visit JM1 at the facility. Mother was unable to articulate to Dr. Feger anything related to JM1’s treatment and there had been no integration of Mother into JM1’s treatment plan. While JM1 was receiving treatment in her residential facility, Mother should have been simultaneously addressing her own issues, obtaining and maintaining her sobriety, and

consistently visiting with the Children. Instead, Mother admitted to actively using drugs and did not take advantage of the visitations that were set up for her. This has greatly affected JM1, who Dr. Feger testified has had to become self-reliant while she struggles with the loss of her Mother and what she hoped her Mother would be.

As with JM1, Dr. Feger made a clinical decision to not observe Mother and JM2 together. JM2 has an idealized perspective of Mother – she has verbalized that she still believes that Mother can provide care for her and wishes to be reunified with Mother. In Dr. Feger’s professional opinion, observing Mother and JM2 together for a one-hour assessment could have created an artificial expectation of the future for JM2. JM2 verbalized positive experiences and history with Mother to Dr. Feger, who testified that JM2 has an idealized view of what Mother’s role should be in her life. According to Dr. Feger, JM2 has a higher level of resiliency than JM1 and may be able to overlook past experiences. However, JM2 has experienced an “attachment interruption,” which has resulted in her having to make sense of what her future is going to look like knowing that who she identified as her primary caregiver is no longer able to serve in that capacity. JM2’s idea of what a healthy relationship between a mother and child looks like is distorted and she cannot produce a realistic expectation of Mother because she knows only what she wants her to be, not what Mother is actually capable of providing for her. A bond exists between JM2 and Mother, but it is unhealthy.

Mother testified that she hoped after the brief reunion she had with the Children in the hallway prior to a hearing that visits would resume and the Children would see that she was okay. Mother further testified that she was “90% better than when she went to rehab” and informed the Court she would do anything to have another chance to be a parent to the Children. However, a parent’s own feelings of love and affection for a

child do not prevent termination of parental rights. **In re: L.M.**, 923 A.2d 505, 512 (Pa. Super. 2007). Mother's counsel argued that the Children are not necessarily in a permanent placement at this time and that Mother should be permitted to continue to play a role in the Children's lives, even if she has to be reintroduced through therapy and counseling. This Court notes that if the petitioner in a termination of parental rights case is an agency, "it shall not be required to aver that an adoption is presently contemplated nor that a person with a present intention to adopt exists."

23 Pa.C.S. §2512(b). Moreover, termination of parental rights may be critical to helping children with unhealthy bonds to their parents find pre-adoptive placements. **In re: T.S.M.**, 71 A.3d, 251, 268-269 (Pa. 2013) ("Indeed, in some cases, a child's bond with a parent, who has proven incapable for caring for the child, may impede the child's ability to attach to a pre-adoptive family who can provide the needed care and stability.")

These Children have been in limbo since the Agency was granted physical and legal custody in November of 2018, and in all reality much longer than that given the number of caregivers they had throughout their lives. Clearly, it would not be in their best interest to have their lives remain on hold indefinitely in hopes that one day Mother will be able to have the protective capacity necessary to be a parent to the Children. This Court finds that the importance of the Children's permanency is greater than the fragmented bond that exists between Mother and the Children. While termination of Mother's parental rights will likely be painful for the Children, her lack of parental capacity, history of drug abuse, and inconsistent contact has already caused significant trauma. To allow Mother repeated opportunities to remedy these incapacities would be at the expense of the Children's physical and emotional needs. The Court is satisfied that termination of Mother's parental rights would offer permanency in the form of

allowing the Children to mourn the loss of who and what they wished Mother to be to them and move on in a therapeutic capacity. This Court finds that termination of Mother's parental rights 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 JL and CAM, by conduct continuing for a period of at least six months immediately preceding the filing of the petition have 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 JL and CAM have exhibited repeated and continued incapacity, abuse, neglect or refusal which has caused the Children to be without essential parental care, control or subsistence necessary for their physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by them pursuant to 23 Pa.C.S. §2511(a)(2).

3. The Court finds that the Agency has established by clear and convincing evidence that the Children have been removed from JL and CAM's care for a period of at least six months, that the conditions which led to the removal or placement of the Children continue to exist, that the conditions which led to the removal or placement of the Children are not likely to be remedied within a reasonable period of time, and that termination of Father's and Mothers' parental rights would best serve the needs and welfare of the Children pursuant to 23 Pa.C.S. §2511(a) (5).

4. The Court finds that the Agency has established by clear and convincing evidence that no bond exists between JL 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).

5. The Court finds that the Agency has established by clear and convincing evidence that the bond that exists between CAM is fragmented and that the developmental, physical and emotional needs and welfare of the Children will best be served by the termination of her parental rights pursuant to 23 Pa.C.S. §2511(b).

Accordingly, the Court will enter the attached Decrees.

By the Court,

Joy Reynolds McCoy, Judge

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

IN RE: : **NO. 6648**
:
JM1 and :
JM2, :
:
Minor children :

DECREE

AND NOW, this 26th day of **March, 2020**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JL, held on February 12, 2020, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JL 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 PARENT

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 Human Services
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,

Joy Reynolds McCoy, Judge

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

IN RE: : **NO. 6648**
:
JM1 and :
JM2, :
:
Minor children :

DECREE

AND NOW, this 26th day of **March, 2020**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of CAM, held on February 12, 2020, it is hereby ORDERED and DECREED:

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

NOTICE TO NATURAL PARENT

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 Human Services
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,

Joy Reynolds McCoy, Judge