

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

IN RE:	:	NO. 6687
	:	
DD1	:	
DD2	:	
DD3,	:	
Minor children	:	

OPINION AND ORDER

AND NOW, this 26th day of **October, 2020**, before the Court is Lycoming County Children & Youth Services' ("Agency") Petition for Involuntary Termination of Parental Rights of KD ("Father") and SD ("Mother") filed on January 28, 2020, with regard to their minor children, DD1, DD2, and DD3 ("Children"). Hearings on the Petition for Involuntary Termination of Parental Rights were held on May 27, 2020, September 2, 2020, and September 15, 2020. Father was present at all times and was represented by Trisha Jasper, Esquire. Mother was present at all times with the exception of the first trial date of May 27, 2020 at which time she did not appear. Mother was represented by Dance Drier, Esquire. Also present at the hearings were the following: John Pietrovito, Esquire, Solicitor for the Agency; Angela Lovecchio, Esquire, Guardian *Ad Litem* for the Children; and Taylor Mulholland, Esquire, counsel for the Children.

Findings of Facts

I. Introduction

DD1 was born on June 29, 2012, DD2 was born on February 15, 2014, and DD3 was born on August 19, 2018. They are the children of KD, date of birth May 3, 1983, and SD, date of birth March 10, 1982. Mother and Father were married at the time of

each child's birth and currently remain legally married although they live separately. At the time the Children were taken out of their parents' custody, both Mother and Father resided in a home in Montgomery, Pennsylvania. However, Father was not home frequently due to his work schedule and her personal choice to spend time with his mistress, leaving Mother as the primary caregiver for the children.

II. December 20, 2018

On December 20, 2018, the Agency received a report from personnel at Geisinger Family Practice that DD3 was covered in scratches and bruises. (Ex. D). The number of scratches and bruises on DD3's body was a stark difference from the two scratches noted just eight days prior at a doctor's appointment. Upon questioning from an Agency caseworker, Mother could not provide a reasonable explanation as to how the scratches and bruises occurred. DD3 was admitted to the hospital for failure to thrive, weighing under ten (10) pounds at four (4) months old, and for an evaluation of potential abuse. (Ex. D). Two rib fractures and two chip fractures at the bottom of DD3's femur were subsequently discovered. (Ex. F). A physician later testified that the rib fractures would have occurred around Thanksgiving, which was November 22, 2018. (March 19, 2019 Order).

Mother explained to the Agency caseworker that her two older sons, DD1 and DD2, were currently being cared for by a family friend. However, upon inspecting Mother's residence, the Agency caseworker found DD1 and DD2 – ages six and four at the time – home alone. Upon further examination, the caseworker discovered numerous scratches and bruises on both DD1 and DD2 as well as what the Honorable Judge Reynolds McCoy has described as “deplorable” home conditions. (Photos of the home are at Ex. K1-K90 and L1-L20). Because the Agency caseworker was also concerned

about potential abuse to DD1 and DD2, they were taken to the Williamsport Hospital for evaluations. The “Clinical Impressions” noted in DD1 and DD2’s medical records from December 20, 2018 state: “physical child abuse confirmed; neglect.” (Ex. A and B). A few days later, Dr. Bruno of the Geisinger Medical Center dictated medical records for both DD1 and DD2. In those medical records, three typed pages were dedicated to documenting the scratches, bruises, and abrasions on each child. (Ex. I1 and I2. Photos of the Children’s injuries are at Ex. L21-L54 and M1-M44).

Upon learning that she could not keep the Children in her custody, Mother informed the Agency caseworker that Father was working out of town and that there was no other family in the area to care for the Children. While Mother was on the phone with Father explaining what had happened, an Agency caseworker heard her tell Father that DD3 was being admitted to the hospital “because of the scratches. I told you.” Upon learning that there was no family available to care for the Children, including their Father, the Agency filed motions for emergency protective custody as to all three of the Children, all of which were granted on December 20, 2018.

III. December 21, 2018 – Shelter Care Hearing

A shelter care hearing was held the following day at which point the Agency filed dependency petitions for all three Children. Dr. Bellino of the Geisinger Medical Center reported on this date that DD3 had “a number of linear abrasions located over nearly every surface of the body” and that there is “no doubt that this child is the victim of neglect and physical abuse.” (Ex. G). The Court found that the Children’s return to their parents’ home was not in their best interest and continued their placement with the Agency. Father permanently moved to the western part of the state – three or more hours away – to live with his mistress shortly after the Children were taken into the

Agency's custody. He has not moved back to Lycoming County since the start of this case and has indicated that he has no intention to do so, despite still owning a home in Lycoming County.

IV. December 28, 2018 – Mother's Arrest

On December 28, 2018, Mother was arrested and charged with Aggravated Assault, Endangering the Welfare of a Child, Simple Assault, and Reckless Endangerment relating to the abuse and neglect of DD1, DD2, and DD3. (Ex. J). On April 3, 2019, Mother was prohibited from having any contact with the Children as a condition of her bail. This bail condition remains in place.

V. March 19, 2019 – First Finding of Aggravated Circumstances

A motion for a finding of aggravated circumstances was filed by the Agency on February 19, 2019 against Mother as an indicated perpetrator of abuse for causing injuries to DD3 including scratches, a broken femur, two broken ribs, and burns as well as for failing to provide DD3 with nutrition. The Agency also filed a motion for a finding of aggravated circumstances against Father for failing to provide DD3 with nutrition. Finally, the Agency filed motions for a finding of aggravated circumstances against Mother as an indicated perpetrator of abuse for causing DD1 and DD2 bruising and for repeated failure to supervise. No aggravated circumstances were filed against Father for DD1 and DD2 at this time but the motions were later amended to include both parents with regard to DD1 and DD2.

Hearings on the Agency's dependency petitions and aggravated circumstances motions were held on February 27, 2019 and March 19, 2019 at which point the Court entered the following Orders:

1. Adjudication and Disposition, adjudicating all three Children dependent;

2. Finding that aggravated circumstances existed as to both Mother and Father;
and
3. Setting forth findings of serious bodily injury and aggravated physical neglect of the Children caused by Mother and aggravated physical neglect of the Children caused by Father.

In her March 19, 2019 Order, Judge McCoy recounts the testimony of the Children's physicians who stated that the scratches, abrasions, and bruises on the Children were extreme and too numerous to count, and that the injuries sustained by the Children were painful and consistent with battered and abused Children. PA Ward testified that DD1 reported that Mother had hit him with a telephone ten times and that Father had made his lip bleed. Judge McCoy opined that the abuse inflicted upon the Children "is the worst that [the trial court] has ever seen." Further, despite Father's assertion that he had no knowledge of the conditions of the home or the abuse to the Children, the Court found "it very hard to believe, based on the pictures that were presented . . . that [the] conditions miraculously happened between Father's last time in the home on November 28th up until December 20th." Judge McCoy specifically found that Mother had caused serious bodily injury and aggravated physical neglect to the Children and noted that the Court "has suspicion that Father may have caused serious bodily injury" but found that "Father did cause aggravated physical neglect to the Children." Additionally, the Court specifically stated that it would not order reunification efforts by the Agency *in regard to either parent*.

VI. May 2019 – Father's Incarceration

Father was incarcerated from May 22, 2019 to May 27, 2019 for his second DUI offense. As a result, he missed visits with the Children and his license was suspended

for one year. Only a few weeks later, Father was again arrested for Driving on a Suspended License and his license suspension was extended by another year. Father was not forthcoming or entirely truthful about these arrests when questioned by the Agency. (Ex. CC).

VII. 2019 Permanency Review Hearings

Permanency Review Hearings were held on April 18, 2019, July 16, 2019, and November 1, 2019 and corresponding Orders were issued. At the time of each of these review hearings, Mother was found to have either moderate or no compliance with the permanency plan with minimal to no progress and Father was found to have moderate to minimal compliance with the permanency plan with minimal progress. It is noted that Father was having in person and video visits with the Children, although at some point Father requested to reduce his number of in person visits due to his long drive. Additionally, during these review periods, Father did undergo anger management and domestic violence programs. There was testimony that Father also followed the direction of the Agency's visitation staff.

VIII. September and October 2019 Evaluations with Dr. Feger

Mother, Father, DD1, and DD2 underwent separate evaluations by Dr. Denise Feger in September and October of 2019. (Ex. T1, T2, T3, and T4). Mother reported to Dr. Feger that she and Father generally decided on parenting strategies and consequences for misbehavior together and that it was not uncommon for Father to be violent and aggressive in the home environment. Mother stated that her mental health symptoms were aggravated following the birth of DD3 because she was primarily alone and caring for the Children herself. She was adamant that Father knew about the abuse to the Children and even participated in the punishment. Dr. Feger opined that Mother

continues to struggle with her circumstances, is not entirely forthcoming about the abuse to the Children, and that there is a high likelihood that her mental health symptoms will be triggered by additional exposure to traumatic events. Mother's mental health issues remain largely unresolved. Dr. Feger opined that it is in the best interest of the Children for Mother to continue to have no contact with the Children.

Dr. Feger feels strongly that Father is not telling the whole truth about his knowledge and participation in the abuse, that he struggles to be forthcoming in addressing any of his deficits, instead becoming adversarial when questioned about it, and shows a strong lack of responsibility regarding the abuse that the Children endured. Father is also not forthcoming with his past legal history. For example, Father reported to Dr. Feger that he had no children other than DD1, DD2, and DD3; however, the Agency found, and Father later admitted, that he does have two other children to whom his rights were previously terminated. Dr. Feger stated that Father did a poor job of implementing her recommendations regarding the content of his discussions and his engagement during his visits with the Children and the result is that the Children no longer see him as a father figure. The relationship between Father and the Children is artificial because Father "struggles to interact with them." The Children are in a constant state of anxiety due to the visits with Father which causes therapeutic and psychological harm to the Children.

In sum, Dr. Feger opines that because Father continues to refuse to take responsibility and has failed to take steps toward reunification, the Children have been essentially stuck in limbo for almost two years and are unable to grow therapeutically due to their lack of permanency. Because Father has made very minimal progress despite the Agency's and Dr. Feger's efforts toward reunification, it is currently

dangerous to the Children to be reunified with Father and dragging it out will only damage the Children more.

DD1 reported that Mother was responsible for the Children's physical abuse. He disclosed to Dr. Feger that Father would hurt him and his brothers, that Father was aware of their injuries, and that DD1 was scared of Father and Mother but felt safe in his current home. DD1 has increased anxiety during the visits with Father and constantly worries he will upset him. DD1 listed his foster mother as his only support. During visits with Father, DD1 generally would not engage with him and sought little support from him.

DD2 reported to Dr. Feger that Mother was physically abusive toward him and that Father was aware of the abuse and would "get mad at mommy." He told Dr. Feger that he trusts "God, Jesus, daddy, and Jen [foster mother]." Dr. Feger reported that DD2 has aggressive behaviors in an effort to sabotage relationships and opined that DD2 often becomes angry and acts out during visits with Father because he is attempting to terminate the relationship. Both DD1 and DD2 identified their foster mother as their primary caregiver. Based on the information given to Dr. Feger by DD1 and DD2 during the evaluations, three CPS reports were filed with the Agency, one for each of the Children, alleging Father as a perpetrator by omission for failing to protect them from the abuse caused by Mother. All three reports were indicated on November 22, 2019.

IX. February 18, 2020 – Permanency Review Hearing and Second Finding of Aggravated Circumstances

A Petition for a Permanency Review Hearing was filed on January 29, 2020. Father continued to have one three hour in person visit with the Children per week as well as one video chat per week. It was reported that Father failed to attend several

medical appointments for the Children as well an IEP meeting and that Mother was unable to successfully complete her drug and alcohol treatment. Also in its Petition, the Agency states that it had received three new CPS reports, one for each child, naming Father as the alleged perpetrator. (Ex. N38). A Permanency Review hearing was held on February 18, 2020. It was reported that Mother has been minimally compliant with the permanency plan as there has been no contact between Mother and the Children pursuant to Mother's bail restrictions and because Mother failed to follow up with the Agency regarding the Children's medical and schooling status. It was also reported that Father has been moderately compliant with the permanency plan. Increased behavioral and toileting issues were noted by the resource parent prior to and after visits and calls with Father. The Court also noted in its Order that Father has performed parental duties and implemented the Agency's suggestions. Overall, Mother had made no progress and Father had made moderate progress toward alleviating the circumstances which necessitated the original placement. (Ex. N39, N40, and N41).

Also on February 18, 2020, the Court found that the Agency presented clear and convincing evidence that alleged aggravating circumstances existed regarding Father due to his failure to report the abuse of all three of the Children. (Ex. N42, N43, and N44). The Court noted that "Father committed abuse by omission in failing to report obvious and unmistakable signs of abuse" of the Children. (Ex. N42, N43, and N44). During the February 18, 2020 hearing, Mother, who had nothing to gain from her testimony, testified that Father played a part in causing the Children's bodily injuries or at the very least was aware of and saw the Children's bodily injuries, particularly extensive bruising, and failed to act upon that knowledge. Specifically, Mother testified that she witnessed Father hit DD1 with the handle of a metal Swiffer duster and that he

had regularly seen the bruising on the Children. The Children's bodily injuries, including bruising and scarring, were so numerous that the doctors examining the Children could not count them in accordance with their standard practice. Further, Mother testified Father was present and saw the child during the period the injuries occurred.

Importantly, the Court entered an Aggravated Circumstances Order on February 18, 2020 and again ordered that the Agency was not required to make efforts to preserve the family and reunify the Children with Father. Father appealed this decision, which was affirmed by the Superior Court on September 4, 2020.

August 19, 2020 Permanency Review Hearing

In between the May 27th and September 2nd trial dates, a Permanency Review Hearing was held. The Agency reported in its petition that Father had been telling the Children during their visits that he bought a bigger house and that they each would have their own bedrooms. Father's statements indicating the Children would be going to live with Father caused increased anxiety for the Children, as reported by their resource mother. The Court found that there had been no compliance with the permanency plan as to Mother since there has been no contact between her and the Agency. Father had minimally complied with the permanency plan. He continued to reside in Allegheny County with his fiancé and her daughter. It is also noted in the Order that "Father had considered moving back to the Lycoming County area to be closer to the Children but has apparently decided that he will not be doing that." The Order notes that all three of the Children continue to do well in their resource home. However, they do not do well with the visits with Father because they receive mixed messages and empty promises from Father and because Father is not entirely engaged with the Children during this video calls particularly. (Ex. DD, EE, FF). For these reasons and particularly due to the

Children's constant state of anxiety when visiting with Father, the in person visits were reduced and video visits were eliminated.

X. Termination of Parental Rights Trial

As stated above, the hearings on the Petition for Involuntary Termination of Parental Rights were held on May 27, 2020, September 2, 2020, and September 15, 2020. At the time of trial, the following witnesses testified: Melissa Hume, Agency Caseworker; Jordan McGill, Agency Caseworker; Dr. Denise Feger; JN, the Children's resource parent; Ashley Myers, Agency Caseworker; Corey Burkholder, Father's Outreach Caseworker; William Pearson, Agency Visitation Caseworker for Father; Father; and Mother.

JN testified that the Children, especially DD1 and DD2, continued to show increased behavioral issues following visits with Father including crying, bedwetting, and fighting. Prior to trial, Attorney Mulholland asked that DD1 and DD2 draw a picture of the people in their families. In both of the drawings, all three of the Children are included along with the resource parents and their extended family. Mother and Father are not included in the either drawing. (Ex. LA1 and LA2).

Dr. Feger testified that since the time that the video visits stopped and the in person visits were reduced, the Children have made significant improvements and both DD1 and DD2 have stated that they are glad they do not need to do the video calls with Father anymore. Of note, Dr. Feger ultimately recognized that the resource home in which the Children are currently placed is not an adoptive home. However, Dr. Feger opined that the Children will experience less trauma if they are transferred to an adoptive home than if they were placed back in Father's custody. What it comes down to is that Father is unable to sustain any sort of attachment with the Children. He has

made no attempts at sustainability. According to Dr. Feger, one of Father's biggest barriers to success is his lack of honesty, truthfulness, and cooperation. She testified that it is very difficult for her to help him because he is not forthcoming and she feels his actions or omissions will be repeated. Further, as stated by Dr. Feger, Father has not shown any empathy or sympathy to the abuse that the Children endured. The Children have been in the Agency's care for almost two years. Mother still has no contact with the Children and does not make efforts to follow up on their wellbeing and Father not only remains on supervised visits with the Children but recently had his visits reduced and is falling backward instead of moving forward. Dr. Feger testified that neither Mother nor Father have met her minimum expectations.

Father's defense, essentially, is simply that he did not know that the abuse to the Children was happening. Father has testified that the last time he had been home or seen the Children prior to December 20, 2018 was November 27th or 28th of 2018. During trial, Father presented evidence of his work schedule and bankcard showing that he was either working or in the western Pennsylvania area on his days off at the time that the abuse would have occurred. (Father's Exhibits 1, 2, and 3). He has reported several times that he did not cause any of the injuries to the Children and was unaware of any of the abuse. However, both Mother and the Children have stated unequivocally that Father was both aware of the abuse and caused some of the injuries. Father did admit during the trial that he was in the wrong because he was not there for his Children and that he feels guilty about that. He later stated that he has no intention of moving back to Lycoming County because he is happy where he currently resides. When asked if the Children's bedrooms in his home were ready, Father responded that they were not because "he didn't want to be disappointed" if his rights were terminated.

On cross examination, Father was asked why he did not go home on his days off work in mid-December, which would have been December 14th through December 16th, 2018. He answered that he was staying with his mistress, instead of going home. Contrarily though, Mother testified that Father was home on those dates, which was two days before the Children were taken into Agency custody, and at that time Father saw the Children and saw the condition of the home. When confronted with and questioned about Mother's testimony, Father replied "no comment." He also testified that he feels he does not need any professional help and that no one is giving him anything. Mother stated that she would be willing to sign a Consent to terminate her parental rights if it was guaranteed that the Children were never back in Father's legal or physical custody.

Discussion

Not all people will parent in the same manner, nor should they be expected to do so. Not all family dynamics are the same, nor should they be expected to be. The relationship between parents and how they provide for their children will vary based upon the circumstances. However, regardless of the circumstances, all parents must provide for the basic needs of their children in a safe and healthy setting. In the case at bar, it is undisputed that the basic needs of the Children were not met and they were subjected to an unconscionable level of physical abuse and neglect. What is at issue here is whether or not the parents have taken sufficient steps to remedy the circumstances that led to their failure to meet the Children's basic needs and their physical abuse and neglect. The Court will evaluate each of the four grounds for termination brought by the Agency and, as the parents are no longer a single-family unit, the Court will evaluate each parent separately for each ground.

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

§2511. Grounds for Involuntary Termination

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

- (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.
- (2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.
- (5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.
- (8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

In order to involuntarily terminate parental rights, the 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). Since April of 2019, when Mother's bail was set, Mother has not seen or spoken to the Children. Dr. Feger opined that it was in the best interest of the Children that Mother have no contact with them. Mother was offered the opportunity to write the Children a letter with the help of Dr. Feger as closure, but that attempt was effectively blocked by the District Attorney. Mother has expressed that she wishes to see her Children but understands why she is not permitted. Father has repeatedly expressed his desire to be involved with the Children and has, however sporadically or uncooperatively, visited with the Children and communicated with the Agency. Father has also been involved in the Children's custody process, appeared for hearings, and even appealed a decision by the Court, although it was unsuccessful. For these reasons, the Court finds that neither Father nor Mother have demonstrated a settled purpose to relinquish parental claim to the Children.

Additionally, grounds for termination under 23 Pa.C.S. 2511(a)(1) may also be proven where a parent fails to perform parental duties for a period in excess of six months prior to the filing of the Petition for Involuntary Termination of Parental Rights.

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).

Essentially, a parent must make contact with the children workable and a more serious priority than personal needs and must make reasonable efforts to overcome any obstacles to form or maintain a parent-child relationship. *Id.* See also Pennsylvania Dependency Benchbook, 3rd Ed. (2019), Office of Children and Families in the Courts, Harrisburg, PA.

As Mother has not seen or spoken with the Children since April of 2019, it is clear that Mother has failed to perform any and all parental duties. In looking at the facts surrounding this case from beginning to the present, the Court is convinced that Father has not in the past, does not now, and will not in the future put the Children's needs before his own. While the Court recognizes that the COVID-19 pandemic may have somewhat hindered Father's parental duty performance, Father cannot use this as an excuse as the Agency filed its petition on January 28, 2020 and the six-month lookback period as required by the statute was well before the pandemic began.

There was testimony presented throughout the course of the trial that Father, when visiting with the Children under the Agency's supervision, would always bring a meal, he would play games with the Children, and do his best to engage the Children. Father would also buy the Children birthday and Christmas gifts. However, as stated above, parental duties includes more than providing financial support and rather requires a parent to place his Children's needs before his own.

Despite owning a home in Lycoming County, Father permanently moved to the western party of the State, which is several hours away, to live with his now fiancé and her child just a few days after the Children were taken into the Agency's custody. This clearly makes it more difficult for Father to perform parental duties. Since that time, Father has remained in the western part of the State. In fact, at one point Father requested to reduce the number of in-person visits with his Children and instead have video calls due to the far drive, even though Father knew that the Children bonded much better with him during in-person visits than on video calls. There was also testimony that when Father was on video calls with the Children, there were times when he was distracted by other activities, such as buying a car, and either would not or could not engage them. Additionally, Father testified that he has no plans to move back to Lycoming County in order to be closer to the Children. His reasoning is that he is happy in his current situation and he does not want to be reminded about what went on here. Finally, there is testimony that the Children do not consider Father a protective, parental figure in their lives, but rather consider their resource parent their primary caregiver. Regardless of whether Father feels that moving back to Lycoming County was unimportant, he has failed to recognize the importance placed on his location by the Agency and Dr. Feger.

It is clear that Father has failed to maintain communication and association with the Children. Father's current attitude and actions demonstrate that he has not changed his priorities, that his happiness comes first, and that the Children fit in to his life only to the extent convenient to him. The Court hereby finds by clear and convincing evidence that the Agency has fulfilled the requirements of 23 Pa.C.S. §2511(a)(1) in that both Father and Mother have failed to perform their parental duties for at least six months prior to the filing of the termination petition.

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

- (1) [R]epeated and continued incapacity, abuse, neglect or refusal; (2) 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).

“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). While a parent expresses his or her desire to work toward reunification, “[i]t is not enough that [the parent] pledges to do more in the future. Once the [parent] has abandoned parental control through his [or her] own actions, it is not enough for him [or her] to ‘promise’ to do better to *regain* parental control in the future.” **In re: J.L.C and J.R.C.**, 837 A.2d 1247, 1249 (Pa.Super. 2003).

As this Court has already found on multiple occasions, it is extremely clear that Mother committed physical abuse against these Children. Mother admits that she was the only person at home and caring for the Children. The Court previously described the Children’s injuries as the worst it has ever seen. The Children had scratching and bruising on their bodies to the point that there were too many to count. One physician testified that DD3 was, at some point, squeezed so hard that his stomach touched his spine. DD3 was admitted to the hospital due to failure to thrive because, at four months old, he weighed what a newborn baby might weigh. The abuse to these Children continued up until the day they were taken out of Mother’s custody. This abuse forced the Children to care for themselves physically and be entirely without emotional support. Mother has not had any contact with the Children for a year and a half and it is in the best interest of the Children, according to Dr. Feger, that she remain unable to see or speak to them. Additionally, Mother suffers from mental health issues that

remain largely unresolved. Mother, therefore, cannot remedy the abuse and neglect she has caused the Children.

The Court finds by clear and convincing evidence that the Agency has fulfilled 23 Pa.C.S. §2511(a)(2) by demonstrating Mother's repeated and continued incapacity, abuse, and neglect has caused the Children to be without essential parental control or subsistence necessary for their physical and mental well-being.

Father has admitted that he was not there for his Children when he should have been. He essentially abandoned his Children because the relationship between him and Mother was failing. Father acknowledged that he knew Mother was overwhelmed caring for three children full time and recognized that she needed help. His response, however, was to be with his mistress hours away from home. Additionally, while Father claims that he did not cause or have knowledge of the abuse to his Children, Mother has provided contradictory testimony, which the Court has found reliable. Father's unwillingness to put his Children's needs and happiness before his own contributed to the lack of parental care, control, and subsistence necessary for the Children's physical and mental well-being.

Since the time the Children were taken into the Agency's custody, Father continues to refuse to take responsibility for not only his knowledge, actions, and omissions regarding the abuse to the Children but also other shortcomings that he may have as a parent including, but not limited to, failing to be honest and forthcoming and failing to place his Children's needs before his own. Since the Children were taken into custody by the Agency, Father has not necessarily

refused to perform parental duties. He has, however, refused to follow the Agency's and Dr. Feger's recommendations regarding correcting any deficits he has in performing parental duties. The Agency has provided Father with services and attempted to reunify him with his Children, *despite a Court Order stating it need not make such efforts*. For almost two years, Father has failed to cooperate with the Agency and although he states he wishes to have custody of his Children again, his statements are not enough as his *actions* have shown the Court that he is more interested in his own wellbeing than those of his Children.

Father has moved over three hours away from where his Children are located and is living with another woman. At some point after he moved, Father switched jobs and claimed he did so because he could spend more time with the Children. However, Father later admitted that he knew he would be fired from his job because of the DUI for which he was arrested months prior to "switching jobs." The reality is that he switched jobs because his old job required a driver's license and the new one did not. If Father were truly switching jobs to have more time with the Children, he would have at least looked for jobs near where the Children were located. He admitted that he made absolutely no attempt to find a job near the Children.

Despite Father's promise to the Children that they would each have their own bedroom if they moved back with him, Father has never obtained housing that has more than three bedrooms. Additionally, Father testified that he does not yet have the Children's bedrooms set up because he does not want to be disappointed if his rights are terminated.

Generally speaking, the Court understands that a parent may desire to relocate for a fresh start and that may be appropriate under normal circumstances. However, we are not dealing with a minor issue here. Rather, we are dealing with a situation where the Children had to be removed from their home due to severe physical abuse and neglect from their Mother while Father was away from the home working and spending time with his mistress. Father's attempt to start fresh is what led to the situation where the Children were abandoned and abused by their Mother who was likely experiencing a mental health episode following the birth of DD3.

Father has failed to prioritize his Children and continues to place his own needs and desires before his Children's needs. This conduct has been continuing for almost two years. Father has been given ample time and opportunities to reunite with his Children and yet has failed to do so. For these reasons, the Court finds that Father will be unable to remedy his incapacities which have prevented him from being reunified with the Children. This Court is unwilling to further delay the Children's permanency based on Father's intentions to be an appropriate resource for the Children in the future. The Court finds by clear and convincing evidence that the Agency has fulfilled 23 Pa.C.S. §2511(a)(2) by demonstrating Father's repeated and continued incapacity and neglect 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 Pa.C.S. § 2511(a)(5) requires that: (1) the child has been removed from parental care for at least six months; (2) the conditions which led to removal and placement of the child continue to exist; and

(3) termination of parental rights would best serve the needs and welfare of the child.” **In re: K.J.**, 936 A.2d 1128, 1134 (Pa. Super. 2007).

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

The Children have been in placement for well over twelve months. In fact, come mid-December, they will have been in placement for *twenty-four months*. The first element, therefore, is met. The conditions of the Children as well as the home on the date the Agency took custody were so extreme and severe that Mother is prohibited from seeing or even speaking with the Children. Mother continues to have unresolved mental health issues and, after almost two years,

has no plan as to how she can reunite with the Children. Additionally, Mother has failed to complete the necessary treatments recommended by the Agency. If Mother had the Children back in her custody, it is likely that her mental health would decline back to where it was prior to placement, causing the Children to experience additional abuse and neglect. The Children have expressed that they fear Mother. They are currently thriving in their new environment and Dr. Feger has opined, and the Court agrees, that termination of Mother's parental rights would best serve their needs and welfare.

Father, as he admits, failed to be there for his Children, even when he was not working. The Court has already found on numerous occasions that the Agency has proven that Father, at the very least, had knowledge of the abuse. However, even if the Court were to assume Father knew nothing about it, his lack of knowledge was a result of him never being home. When he had days off work, instead of going home, Father would be hours away with another woman. In fact, according to Father, he had not seen his Children for almost an entire month before the Agency took custody. Almost immediately after the Children were placed, Father permanently moved hours away with his fiancé and her daughter hours, despite owning a home in Lycoming County. Father's actions, or lack thereof, demonstrate that he has failed to remedy his shortcomings that led to the Children's placement in the first place – namely, his failure to place his Children's needs and desires before his own, as explained in great detail above. The Children fear Father and clearly do not have a good relationship with him or see him as a Father figure. There is testimony that the Children, especially DD1 and DD2, act up and misbehave before and during video calls with Father.

Additionally, the Children become anxious and stressed when they know a visit is upcoming to the point that the Court reduced Father's visits with the Children and eliminated video calls. They do not see him as a Father figure or even a caregiver. The Agency has proven that the Children are doing exceptionally better without Father in their lives and will be better served out of Father's custody than in Father's custody and therefore, termination of Father's rights would best serve their needs and welfare of the Children.

The Court finds that the Agency has proven by clear and convincing evidence that grounds for termination of Father's and Mother's parental rights exist under both Sections 2511(a)(5) and (8). It is clear to this Court that termination of Father's and Mother's parental rights would best serve the needs and welfare of the Children.

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

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

The Court must take into account whether a bond exists between the child and parent, and whether termination would destroy an existing, necessary and beneficial relationship. **In the Interest of C.S.**, supra, at 1202. When conducting a bonding

analysis, the Court is not required to use expert testimony. **In re: K.K.R.-S.**, 958 A.2d 529, 533 (Pa. Super. 2008) (citing **In re: I.A.C.**, 897 A.2d 1200, 1208-1209 (Pa. Super. 2006)). “Above all else . . . adequate consideration must be given to the needs and welfare of the child.” **In re: J.D.W.M.**, 810 A.2d 688, 690 (Pa. Super. 2002).

The Court believes that both Father and Mother love their 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).

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).

Mother has not seen or spoken to the Children since at least April 3, 2019. There was testimony that sometimes the Children will ask their foster mother about their biological Mother, but do not consider her a Mother figure and no longer wish to see her. Additionally, the Children were two years younger when they were placed and DD3 was only four months old. It is doubtful that DD3 even remembers his Mother, and therefore cannot have a bond with her. Additionally, while Mother may have a bond with DD1 and DD2, it is not a positive bond and the Children have experienced severe abuse at the hands of their Mother. Mother has created a harmful connection to the Children and therefore, there is no positive bond that would be destroyed by terminating Mother’s rights.

As stated several times above, the Children's attitude, behavior and conduct dramatically worsens prior to, during, and after visits with Father. In fact, DD1 and DD2 were reported to be relieved when they were no longer forced to have video calls with Father. The Children are only physically seeing Father once per week. Throughout the entirety of this case, Father has never had an unsupervised visit with the Children and, with the exception of one or two times, all visits have taken place in a controlled setting provided by the Agency. The Children have never been to Father's home. Dr. Feger describes Father's relationship with the Children as "artificial with a minimal bond." (Ex. 3). Dr. Feger also testified that any bond Father does have with the Children are unhealthy. The Children do not feel safe with him, they do not desire to please him, they fear him, and they do not rely on him. As the Court understands it, the Children see their visits with Father as more of an obligation rather than a chance to be with someone who they understand will support them and love them. Rather, it is evident that the Children have a stronger bond with their foster family than with Father. The Children are currently flourishing in their current placement and are happy, healthy, and loving young kids. Dr. Feger has opined, and the Court agrees, that placing the Children back with Father or extending this case out even longer will be detrimental to the progress that they have made thus far. Any bond that does exist between the Children and Father, if broken, will likely benefit the Children more than harm them.

Therefore, the Court is satisfied that termination of Father's and Mother's parental rights would not destroy an existing bond or cause any trauma to the Children and that permanency in the form of adoption 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 KD and SD, 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 KD and SD 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 KD's and SD'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 Mother's 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 the children have been removed from KD's and SD's care for a period of twelve months or more, that the conditions which led to the removal or placement of the children continue to exist, and that termination of Father's and Mother's parental rights

would best serve the needs and welfare of the children pursuant to 23 Pa.C.S.

§2511(a)(8).

5. The Court finds that the Agency has established by clear and convincing evidence that no bond exists between KD and the Children or SD and the Children and that the developmental, physical and emotional needs and welfare of the Children will be best served by the termination of his parental rights pursuant to 23 Pa.C.S.

§2511(b).

Accordingly, the Court will enter the attached Decrees.

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: John Pietrovito, Esq.
Trisha Jasper, Esq.
Dance Drier, Esq.
Angela Lovecchio, Esq.
Taylor Mulholland, Esq.
CASA
Lycoming County Children and Youth Agency
Gary Weber, Esq.

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

IN RE:	:	NO. 6687
	:	
DD1	:	
DD2	:	
DD3,	:	
Minor children	:	

DECREE

AND NOW, this 29th day of **October, 2020**, after hearings on the Petition for Involuntary Termination of the Parental Rights of KD, held on May 27, 2020, September 2, 2020, and September 15, 2020, it is hereby ORDERED and DECREED:

- (1) That the parental rights of KD 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,

Ryan M. Tira, Judge

RMT/ads

CC: John Pietrovito, Esq.
Trisha Jasper, Esq.
Dance Drier, Esq.
Angela Lovecchio, Esq.
Taylor Mulholland, Esq.
CASA
Lycoming County Children and Youth Agency
Gary Weber, Esq.

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

IN RE:	:	NO. 6687
	:	
DD1	:	
DD2	:	
DD3,	:	
Minor children	:	

DECREE

AND NOW, this 29th day of **October, 2020**, after hearings on the Petition for Involuntary Termination of the Parental Rights of SD, held on May 27, 2020, September 2, 2020, and September 15, 2020, it is hereby ORDERED and DECREED:

- (1) That the parental rights of SD 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.

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2. Any private licensed adoption agency
3. Register & Recorder's Office
4. Online at www.adoptpakids.org/Forms.aspx

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: John Pietrovito, Esq.
Trisha Jasper, Esq.
Dance Drier, Esq.
Angela Lovecchio, Esq.
Taylor Mulholland, Esq.
CASA
Lycoming County Children and Youth Agency
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