

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

IN RE:	:	NO. 2022-6839
	:	
AL,	:	
	:	
Minor child	:	

OPINION AND ORDER

AND NOW, this **21st** day of **June, 2023**, before the Court is Lycoming County Children & Youth Services' ("Agency") Petition for Involuntary Termination of Parental Rights of KT ("Mother") and JL ("Father") filed on November 21, 2022, with regard to AL ("Child"). A hearing on the Petition for Involuntary Termination of Parental Rights was held on May 17, 2023, and May 24, 2023. Mother appeared personally and was represented by Jeana Longo, Esquire. Father appeared personally and was represented by Trisha Hoover Jasper, Esquire. John Pietrovito, Esquire, Solicitor for the Agency, and Angela Lovecchio, Esquire, counsel for the Child, were also present at the hearings.

Findings of Facts

AL was born on [redacted]. She is the child of JL date of birth [redacted], and KT, date of birth [redacted]. Mother and Father were not married at the time of the Child's birth.

The Agency first became involved with the family on July 29, 2021, when it received a Child Protective Services (CPS) report for creating a reasonable likelihood of bodily injury to a child through a recent act/failure to act. Father was named as the alleged perpetrator and the alleged victim was the Child who is the subject of this

petition. A search warrant of the home shared by Father, Mother, and the Child was completed and explosives, guns, methamphetamines, marijuana, and drug paraphernalia were found to be within reach of the Child. Father was incarcerated as a result of this incident. The Agency conducted an unannounced home visit on July 29, 2021, to ensure the safety of the Child. After that date, Mother avoided the Agency.

On August 17, 2021, Mother presented at the Agency unannounced. She appeared skinny, her speech was fast, and there was a strong odor about her. Mother admitted to using meth four days prior and that she had not slept in three days. She also confirmed that she was the Child's caregiver during this time. Mother indicated that the Child was being cared for by someone else at Father's house, but the Agency was unable to locate the Child. On August 18, 2021, Mother was pulled over by police near Jersey Shore with the Child in her car. On that date, the Agency was verbally granted emergency custody of the Child on that date.

A Shelter Care hearing was held on August 20, 2021. Mother attended by telephone and Father attended by videoconference from the Lycoming County Prison. Following the hearing, the Court found that sufficient evidence was present to prove that return of the Child to the home of the parents was not in the best interest of the Child. Mother suggested her father as a resource for the Child, and an attempt was made to contact him by telephone, but his phone was disconnected. He was expected to attend the hearing but did not appear. Legal and physical custody of the Child remained with the Agency and placement of the Child remained in Foster Care.

A Dependency hearing was held on August 30, 2021, after which the Court adjudicated the Child dependent. As the Court found that allowing the Child to be returned her parents' home would be contrary to the Child's welfare, legal and physical

custody of the Child was ordered to remain with the Agency. The Court noted that Father was incarcerated on criminal charges, including ones related to endangering the Child, and that Mother had an ongoing substance use issue with methamphetamines and an unstable housing situation. Mother and Father had failed to take the Child to the doctor in over a year and at the time the Child was placed in Agency custody she had Covid and RSV. The Court found Mother's testimony to be not credible as she was evasive and in denial about her behaviors. Mother was ordered to undergo a drug/alcohol evaluation at Crossroads Counseling and to comply with all recommendations. Additionally, Mother was ordered to sign all necessary releases for her treatment to be shared with the Agency.

A permanency review hearing was held on November 29, 2021. The Court noted that there had been minimal compliance with the permanency plan on the part of Mother, in that she was living with her new boyfriend at Father's residence. Mother did have an intake at Crossroads, but the Agency was unable to verify her attendance. Mother attended one medical appointment for the Child. Mother attended 9 out of 15 visits during this review period and no-showed 6 visits. Mother was referred for Outreach services on September 1, 2021, and attended one appointment on September 30, 2021. Mother was found to have made no progress toward alleviating the circumstances which necessitated the original placement in that she had not been addressing her drug and alcohol issue, nor had she been meeting with Outreach, and her attendance at visits was poor. Father was incarcerated for the entire review period and the Court found him to have no compliance with the permanency plan and made no progress toward alleviating the circumstances which necessitated placement. He had only one Polycom visit with the Child during the review period due to Covid restrictions

at the prison. Following the hearing, the Court reaffirmed dependency and the Child remained in the legal and physical custody of the Agency with continued placement in the foster care home.

A permanency review hearing was held on March 9, 2022. The Court found that there had been no compliance with the permanency plan by both Mother and Father. Father was incarcerated for the entire review period. Mother continued to reside at Father's home. The Agency was unable to confirm whether she attended her West Branch Drug & Alcohol evaluation during this review period, and Mother failed to follow through with Crossroads Counseling. Mother attended only 1 Outreach appointment this review period. She attended 17 out of 20 visits, and no-showed the remaining 3. Mother was scheduled for a guilty plea on December 10, 2021, however she failed to appear for court and a bench warrant was issued for her arrest. Additionally, Mother received new criminal charges during the review period. Father had 5 Polycom visits with the Child during the review period, and sent one letter and a drawing to the Child. Both Mother and Father were found to have made no progress towards alleviating the circumstances which necessitated the original placement. Mother claimed to suffer from frontal lobe damage and diabetes, and was ordered to provide proof of these conditions to the Agency. The Agency was directed to assist Mother with arranging any necessary follow-up care for any verified medical conditions. Following the hearing, the Court reaffirmed dependency and legal and physical custody of the Child remained with the Agency for continued placement in the current foster home.

A permanency review hearing was held on June 24, 2022. The Court found that Mother had no compliance with the permanency plan in that she reported that she had been employed during the review period by Pristine Cleaning Services and Uber, but

had not provided the Agency documentation verifying this employment. Mother did not have a valid driver's license, only a learner's permit, and required someone to drive her while employed through Uber. Mother vacated Father's home and was residing with friends. She was discharged from both Genesis House and Outreach Services due to non-compliance. Mother did attend a dental appointment for the Child during this review period. She attended only 44% of her visits with the Child and was found to be lethargic and sometimes failed to follow the rules. At the review hearing, Mother took a drug screen and tested positive for methamphetamine and amphetamines. Father was found to have moderate compliance with the permanency plan in that he remained incarcerated during the review period but his Polycom visits with the Child went well. Father sent letters to the Child during the review period. The Court specifically ordered Mother to do the following: (1) submit to random drug screens; (2) undergo a West Branch Drug and Alcohol evaluation and follow all recommendations for treatment as well as sign a release so the Agency could obtain the results and verify she is attending treatment; (3) re-enroll in Outreach Services or attend parenting classes at Expectations and sign a release for the Agency to obtain information from Expectations; (4) provide the Agency with a copy of the lease to her apartment; and (5) provide the Agency with documentation of her income. Following the hearing, the Court reaffirmed dependency and legal and physical custody of the Child remained with the Agency for continued placement in the current foster home.

A permanency review hearing was held on September 28, 2022. The Court found that Mother had moderate compliance with the permanency plan in that she reported stable employment cleaning houses for her friend's business as well as working at Dolly's Diner. Mother began to reside at Wise Options and reported being accepted into

Liberty House. Mother did reinstate services at Genesis House and had fair attendance. Mother reported to attending Expectations for Women; however, the Agency was unable to verify her attendance. Mother attended 9 out of 17 visits during the review period. Father had moderate compliance with the permanency plan, in that he remained incarcerated but had 7 Polycom visits with the Child and sent her letters during the review period. The Court found that Mother had made moderate progress and Father made no progress toward alleviating the circumstances which necessitated the original placement. It was noted that Mother willingly took a drug screen at the hearing and tested negative for all substances. There was a positive change noted in Mother's demeanor and actions, and Mother expressed a commitment to comply with the Liberty House rules, which would support her in her recovery. The Agency filed a Petition for Involuntary Termination of Parental Rights during this review period. Following the hearing, the Court reaffirmed dependency and legal and physical custody of the Child remained with the Agency for continued placement in the current foster home.

A permanency review hearing was held on January 20, 2023. The Court found that Mother had minimal compliance with the permanency plan in that her living situation had been unstable and was residing at the Saving Grace shelter at the time of the hearing. Mother only sporadically attended drug and alcohol treatment and attended only 52% of her visits during the review period. Mother admitted to using methamphetamines the day before the hearing. Father had minimal compliance with the permanency plan, in that he remained incarcerated and had only Polycom visits with the Child. He did not send any letters to the Child during the review period. The Court found that Mother and Father made no progress toward alleviating the circumstances which necessitated the original placement. It was noted that Mother had a difficult time during

this review period. Her boyfriend committed suicide in her presence and she signed herself into Divine Providence Hospital for a few days to stabilize her mental health. Mother was kicked out of the Liberty House program in December 2022 for failing to comply with the rules and reported attempting to rent an apartment with money she earned as a custodian at Penn College. Mother reported several significant health problems but was unable to provide documentation to the Agency regarding doctor's visits and hospital stays. Mother's drug use was an ongoing concern. Mother was attentive and loving at visits but her attendance was poor. Mother was again ordered to complete a psychological evaluation, participate in Outreach services and regularly participate in drug and alcohol counseling. Following the hearing, the Court reaffirmed dependency and legal and physical custody of the Child remained with the Agency for continued placement in the current foster home.

A permanency review hearing was held on May 10, 2023. The Court found that Mother had minimal compliance with the permanency plan in that her living situation had not improved as she had several moves but none were appropriate for a child. Mother was again discharged from Genesis House for noncompliance and attended only 55% of her visits during the review period, although it was noted that her parenting did improve when she attended. Mother had not completed the previously ordered psychological evaluation. Father had no compliance with the permanency plan, in that he remained incarcerated and had only Polycom visits with the Child. He sent one letter to the Child during the review period. The Court found that Mother and Father made no progress toward alleviating the circumstances which necessitated the original placement. Mother was again ordered to undergo a psychological evaluation and submit to random drug screens. The Court denied Father's request for in-person visits at the

Lycoming County Prison. Following the hearing, the Court reaffirmed dependency and legal and physical custody of the Child remained with the Agency for continued placement in the current foster home.

The Petition for Involuntary Termination filed on November 21, 2022, alleges termination was warranted under 23 Pa.C.S. §2511(a)(1), (2), (5), and (8). The hearing on the Petition was held on May 17, 2023, and May 24, 2023.

Discussion

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

§2511. Grounds for Involuntary Termination

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

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

In order to involuntarily terminate a parent'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 orphans' court must then consider the parent's explanation for his or her abandonment of the child, in addition to any post-abandonment contact. **In re Adoption of C.J.A.**, 204 A.3d 496, 503 (Pa. Super. 2019). When determining whether to terminate the rights of a parent, 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).

Claudia Perry, visitation caseworker for the Agency, testified that from September 1, 2021, until the time of the hearing on the Petition for Involuntary Termination of Parental Rights, Mother attended 90 visits, canceled 20 visits, was unavailable for 37 visits, and was a no-call/no-show for 40 visits. Mother's overall attendance rate over the life of the case was 60%. Mother's visits have always been supervised, with a caseworker present. Ms. Perry indicated that at the time the Child first came into care, Mother knew nothing about how to properly diaper the Child or provide her with safe toys or good nutrition, and in fact she had to talk with Mother

about food safety 16 times. However, Mother did give the Child love and affection and was extremely supportive of the resource family, and in April of 2023 finally started to show some progress. However, Mother's progress was impeded by her low attendance rate. Ms. Perry attempted to incentivize Mother to attend at least 75% of her visits by indicating she would lower the level from supervised to observed and Mother was never able to meet this goal. In fact, Mother earned "call-in status" after 3 no-shows. This required her to call between 8:00 a.m. and 8:30 a.m. on the morning of her scheduled visit to confirm her attendance. Mother has never shown enough consistency in her visits to be removed from "call-in status."

Due to his incarceration, Father's visits have been limited to Polycom. Ms. Perry testified that Father's visits are 15 minutes in length and that he was good at engaging the Child throughout the visits, and the Child enjoyed them. Ms. Perry noted that Father did not complain or get frustrated when the Child did not want to interact during some visits.

Given the fact that Mother did attend visits, albeit not always consistently, and demonstrated love and affection for the Child in the six months prior to the Agency's filing of its Petition for Involuntary Termination of Parental Rights, and Father made the most of his visits via Polycom, this Court is hesitant to find that either parent demonstrated a settled purpose of relinquishing parental claim to the Child in the six months prior to the filing of the Petition for Involuntary Termination of Parental Rights. However, 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). As the Child was under two years of age at the time she was placed in the Agency's custody, the Child's greatest needs have been food, shelter, clothing, medical care, and comfort. In order to satisfy their obligation to perform even the most basic parental duties, Mother and Father would have to maintain stable housing, maintain employment to financially support themselves and the Child, make and attend medical appointments, and comfort her when she was sick or scared. The Child has been in care for nearly half her life. Since the Child was adjudicated dependent, Father has been incarcerated and Mother has struggled to maintain appropriate housing, stable employment, and address her drug and alcohol concerns. Father's incarceration has precluded him from performing

any parental duties whatsoever, including making meals for and feeding the Child, bathing her, attending medical and dental appointments, and comforting her when she was scared or sick. Mother attended only minimal medical and dental appointments and her attendance at visits was not consistent enough to enable her to fully perform parental duties. Since August of 2021, the Child has depended on her resource parents to provide not only physical needs such as food, shelter, and clothing, but also for her emotional needs such as comfort and support.

Given that Father has never had an in-person visit, and that Mother has missed a significant number of visits each review period, her visits have never progressed beyond supervised visits to community visits, and the vast majority of the Child's daily needs have been fulfilled by her resource parents, neither parent can be said to have performed his or her parental duties or "exerted himself to take and maintain a place of importance in the child's life" in the months preceding, and following, the filing of the Petition for Involuntary Termination of Parental Rights. **Id.** 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 Mother and Father have failed to perform 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 Mother and Father, through:

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

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

Under Section 2511(a)(2), “[t]he grounds for termination [of parental rights] due to parental incapacity that cannot be remedied are not limited to affirmative misconduct. To the contrary, those grounds may include acts of refusal as well as incapacity to perform parental duties.” In re: A.L.D., 797 A.2d 326, 337 (Pa. Super. 2002) (citations omitted). “Moreover, an agency is not required to provide services indefinitely if a parent is either unable or unwilling to apply the instruction given.” Id. at 340. “Parents are required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities. ... [A] parent’s vow to cooperate, after a long period of uncooperativeness regarding the necessity or availability of services, may properly be rejected as untimely or disingenuous.” Id., quoting In re J.W., 578 A.2d 952, 959 (Pa. Super. 1990).

On September 1, 2021, a referral was made for Outreach Services for Mother. Jennifer Johnson, Mother’s Outreach caseworker, testified that the initial goals were parenting, budgeting, housing, and community support. Ms. Johnson testified that her first meeting with Mother was on September 30, 2021, at which time they discussed goals and she gave Mother the parenting pre-test. Ms. Johnson testified that, unfortunately, Mother did not show up for any of their weekly appointments until January 31, 2022, and that was the only other time she saw Mother in person. Mother herself testified that she only attended two sessions with Ms. Johnson because she was fighting a battle against the Agency at the time rather than working with them. Outreach services were closed due to Mother’s lack of participation and Ms. Johnson testified that Mother made no progress toward her goals because she did not meet with her consistently.

“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). Since the inception of this case, Mother has struggled to maintain employment and appropriate housing. Colleen Bolton, ongoing caseworker, testified to approximately 12 different housing situations of Mother’s. Often, Mother reported a new residence but could not provide Ms. Bolton with details such as an address or landlord’s name. Mother was kicked out of numerous housing programs due to drug use or failure to follow rules. With respect to employment, Mother reported to working for Door Dash and Uber in October of 2021, but this was questioned due to her lack of a valid driver’s license. Mother also reported to working for her friend at Pristine Cleaning, and also as a custodian at Penn College, although she was unable to provide Ms. Bolton with the name of her supervisor. Despite repeated attempts by the Agency to obtain verification of Mother’s employment, Mother never provided the requested documentation.

In addition to housing and employment, Mother’s drug use has been a significant concern of the Agency. Although Mother has had contact with West Branch Drug & Alcohol and Genesis House, she has never complied with the directive that she sign a release for the Agency to verify that she has completed evaluations or engaged in services. Mother was sent for a number of drug screens where she either arrived at the facility but refused to provide a sample or failed to appear. Mother testified positive for drug use at one permanency review

hearing and admitted to Agency staff that she had used methamphetamines on other occasions. Mother was discharged from Genesis House a total of 3 times for noncompliance. Ms. Bolton testified that both West Branch and Genesis House had been very attentive in attempting to get Mother the services she needs. However, Mother has failed to address these concerns with any conviction or consistency.

Similarly, Mother has failed to address concerns of domestic violence, both with Father and other partners, and her mental health. Mother experienced significant trauma when her former boyfriend committed suicide in her presence, causing Mother to check herself into Divine Providence for several days of in-patient treatment. However, upon her release she was given several follow-up appointments but did not attend them. Mother was ordered multiple times to participate in a psychological evaluation but efforts by Crossroads Counseling to reach her to set up an intake appointment were unsuccessful.

Ms. Bolton testified that Mother obviously loves the Child, but is unable to parent her. Her residence and employment have never been stable. Mother tends to put herself in bad situations with inappropriate people and has been the victim of domestic violence. Mother has not done any of the services that have repeatedly been asked of her, and ordered by the Court. Mother's incapacities, and her inability or refusal to remedy them, have caused the Child to be without essential parental care necessary for her emotional and physical well-being.

With regard to Father, he requested a continuance prior to the start of the hearing on the Petition for Involuntary Termination of Parental Rights, indicating that he did not believe his parental rights should be terminated solely due to his

incarceration. This Court denied Father's request. The Supreme Court of Pennsylvania has definitively held that "[i]ncarceration, while not a litmus test for termination, can be determinative of the question of whether a parent is incapable of providing 'essential parental care, control, or subsistence' and the length of the remaining confinement can be considered as highly relevant to whether the 'conditions and causes of the incapacity, abuse, neglect, or refusal cannot or will not be remedied by the parent.'" **In re: Adoption of S.P.**, 47 A.3d 817, 830 (Pa. 2012).

Father testified that he plans to be a resource for the Child upon his release from prison. Father has pled guilty in federal court to one count of possession of a firearm with an obliterated serial number. He is awaiting sentencing, although he was unable to provide any information about a definite sentencing date, or length of sentence. Father indicated that he may be sent to a halfway house to serve the final months of his sentence. Although Father was unable to articulate a firm plan upon his release as far as his living situation, employment, and child care, he indicated that he had multiple options for places to live, and job offers, and would be able to acquire all necessities for the Child within 24-48 hours of his release.

Ms. Bolton testified that, in order to be considered a resource for the Child, Father would need to consistently do all of the following for a minimum of six months after his release: (1) gain and maintain appropriate housing; (2) gain and maintain steady employment; (3) obtain a drug and alcohol evaluation and comply with all treatment recommendations; (4) obtain a psychiatric evaluation and comply with all recommendations; (5) satisfy all legal obligations and be

compliant with probation/parole; and (6) regularly attend in-person visits, which would be supervised at first. Father does not have the current ability to be a caregiver for the Child. Although he indicated he expects to be released sometime in 2023, this is not guaranteed. Upon his release Father will need to begin the second phase of his journey towards reunification, which would extend the Child's permanency by an additional 6 months, and potentially even longer if Father suffers setbacks in meeting the Agency's expectations.

Although Father insists he will satisfy all of the requirements, "[i]t is not enough that Father pledges to do more in the future. Once the Father has abandoned parental control through his own actions, it is not enough for him to "promise" to do better to *regain* parental control in the future." **In re: J.L.C and J.R.C.**, 837 A.2d 1247, 1249 (Pa.Super. 2003). Father's own actions, including those which precipitated the raid on his home where guns and drugs were found, led to his lengthy incarceration. Even if Father is released from prison sometime this calendar year and has no setbacks in the following six months while he works towards reunification, the Child's permanency could be delayed an additional year.

This Court would like to emphasize that Father's incarceration is not the sole factor in its determination that Father's incapacities have caused the Child to be without essential parental care, control or subsistence necessary for her physical or mental well-being. The Court has concerns about Father's protective capacity, in that he testified that Mother could not control her drug habit yet he left the Child in the sole care of Mother when he moved out of the home they shared. Father also has two indicated CPS reports where he was named the

perpetrator and the Child was the victim. There are serious concerns about Father's anger issues, as there were reports of domestic violence between him and Mother. None of these issues have been properly addressed by Father, as he testified that the only programming available to him in the prison has been NA and AA. Even if he begins to engage in services immediately upon his release from incarceration, these incapacities are not likely to be remedied within a reasonable amount of time.

The Child has been in placement nearly two years, and neither Mother nor Father have been able to make measurable progress in addressing the incapacities which caused the Child to be removed from their care. Despite repeated attempts by their Outreach and Ongoing caseworkers to connect Mother with beneficial services, she has displayed an inability or refusal to follow-through with actions necessary to address her incapacities while simultaneously ensuring that the Child's needs would be met consistently and appropriately. Father insists that he "is not incapable when he is not incarcerated," but he has no definite date by which he can expect to begin to address his incapacities. This Court finds that neither Mother nor Father has remedied their incapacities within a reasonable amount of time and will likely be unable to remedy them in the future. The Court finds by clear and convincing evidence that the Agency has satisfied 23 Pa.C.S. §2511(a)(2) by demonstrating Mother's and Father's repeated and continued incapacity has caused the Child to be without essential parental control or subsistence necessary for her 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 Court finds that the Agency has proven by clear and convincing evidence that grounds for termination of Mother’s and Father’s parental rights exist under both Sections 2511(a)(5) and (8). The Child was placed in the legal and physical custody of the Agency on August 18, 2021, and has been in Agency’s custody ever since. At one permanency review hearing for the Child, Mother was found to have moderate compliance with the permanency plan, and

found to have only minimal or no compliance at the remaining permanency review hearings. At that same review hearing she was found to have made moderate progress towards alleviating the conditions which necessitated the Child's placement, but at every other review hearing made no progress. Mother has never been consistent about her efforts to be reunified with the Child, as she has inconsistent visits, has not demonstrated an ability to maintain suitable housing or stable employment, and is not committed to addressing concerns with her drug and alcohol abuse or mental health.

Father had moderate compliance with the permanency plan during two review periods and minimal or no compliance during the other review periods. He made no progress towards alleviating the conditions which necessitated the Child's placement. This, of course, takes into consideration the fact that he has been incarcerated since the Child was placed in the Agency's custody. While the Court commends Father for being vocal about wanting to be a resource for the Child, there is concern with the length of time in which it will take Father to address all the necessary issues in order to achieve that goal.

While Father has been incarcerated for the entire time the Child has been in placement and Mother has never been able to obtain suitable housing, steady employment, and address her drug and alcohol concerns, the Child had both her physical and intangible needs met by her foster family. Her foster family is willing to offer her permanency. As neither parent has satisfactorily alleviated the conditions which led to the removal or placement of the Child, it is clear to this Court that termination of Mother's and Father's parental rights would best serve the needs and welfare of the Child.

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. “Above all else . . . adequate consideration must be given to the needs and welfare of the children.” In re: J.D.W.M., 810 A.2d 688, 690 (citing In re: Children M., 681 A.2d 793 (Pa. Super. 1996), appeal denied, 546 Pa. 674, 686 A.2d 1307 (1996)).

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).

The Agency made a referral to Crossroads Counseling for a bonding assessment between Mother and the Child, as well as the resource parents and the Child. Denise Feger, PhD, conducted the assessments. On March 6, 2023, Dr. Feger interviewed Mother and observed a visit between Mother and Child, and later had a conference with caseworkers to collect additional information. Dr. Feger testified that the Child was comfortable and engaging with Mother, cooperative with her directions, and there was no overt defiance or fear responses. However, Dr. Feger testified that the bond she observed was not “typical” of a parent and child, as Mother’s attendance at visits is only about 60% and therefore the Child does not rely on her as a caregiver on an independent and ongoing basis because their contact is intermittent and only for brief periods of time in a controlled environment while under direct supervision. Dr. Feger testified that the visits are “artificial” and more akin to a playdate between an adult and a child than a parent-child relationship. Dr. Feger voiced concerns for Mother’s protective capacity, as Mother’s level of supervision has never lessened, her attendance is mediocre, and she has not been able to obtain stable housing or employment, or change her poor lifestyle choices. For these reasons, Dr. Feger found that reunification between Mother and Child is not likely to be successful.

Dr. Feger was requested to perform an assessment between the Child and her foster parents, which is not typical but was done due to a potential out of state placement option. Dr. Feger testified that the foster parents have created a structure within their home where none of the children have a designation based upon who their biological parents are. The Child, having been in their care for almost two years, is a fully integrated member of their family. Dr. Feger testified that the bond between the foster parents and the Child is that of a parent-child. The Child identifies them as her

primary caregivers and she would experience a profound loss if she were removed from the home.

No bonding assessment was conducted between Father and the Child, due to his lack of in-person visits as a result of his incarceration. While the Polycom visits between the Child and Father have gone well, they have been limited to 15 minutes each. Although it is clear, as evidenced by the song he sang at the hearing, that Father loves the Child, the Court finds that Father's brief interactions with the Child, without Father performing any parental duties, have been insufficient to establish and maintain a necessary and beneficial bond.

The Child has been in the same foster home since being removed from her parents' care. The foster parents have provided everything the Child needs and this has naturally established a bond and attachment between the Child the foster parents which is not present between the Child and Mother or Father. The Child's permanency cannot and should not be delayed. The Child is clearly bonded with the resource parents, who have provided for her physical and emotional needs and who have welcomed her into their family. Most importantly, they are ready, able, and willing to offer her permanency. Given the lack of a bond between the Child and Mother and Father due to each parent's failure to consistently perform parental duties, the Court is satisfied that termination of Mother's and Father's parental rights would not cause irreparable harm to the Child. This Court further finds that permanency in the form of adoption by those who have consistently met his needs is in the best interest of the Child.

Conclusions of Law

1. The Court finds that the Agency has established by clear and convincing evidence that JL and KT, 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 KT, have exhibited repeated and continued incapacity, abuse, neglect or refusal which has caused the Child to be without essential parental care, control or subsistence necessary for her 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 child has been removed from JL and KT care for a period of at least six months, that the conditions which led to the removal or placement of the child continue to exist, that the conditions which led to the removal or placement of the child are not likely to be remedied within a reasonable period of time, and that termination of Mother's and Father's parental rights would best serve the needs and welfare of the child 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 child has been removed from JL's and KT's care for a period of twelve months or more, that the conditions which led to the removal or placement of the child continue to exist, and that termination of Mother's and Father's parental rights would best serve the needs and welfare of the child pursuant to 23 Pa.C.S. §2511(a)(8).

5. The Court finds that the Agency has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of the Child will be best served by the termination of Mother's and Father's parental rights pursuant to 23 Pa.C.S. §2511(b).

Accordingly, the Court will enter the attached Decree.

By the Court,

Ryan M. Tira, Judge

RMT/jel

c. John Pietrovito, Esquire
Trisha Hoover Jasper, Esquire
Jeana Longo, Esquire
Angela Lovecchio, Esquire
Children & Youth
CASA
Gary Weber, Esquire
Jennifer E. Linn, Esquire

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

IN RE:	:	NO. 2022-6839
	:	
AL,	:	
Minor child	:	

DECREE

AND NOW, this **21st** day of **June, 2023**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JL, held on May 17, 2023, and May 24, 2023, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JL be, and hereby are, terminated as to the child above-named;
- (2) That the welfare of the child will be promoted by adoption; that all requirements of the Adoption Act have been met; that the child 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/jel

cc. John Pietrovito, Esquire
Trisha Hoover Jasper, Esquire
Jeana Longo, Esquire
Angela Lovecchio, Esquire
Children & Youth
CASA
Gary Weber, Esquire
Jennifer E. Linn, Esquire

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

IN RE:	:	NO. 2022-6839
	:	
AL,	:	
	:	
Minor child	:	

DECREE

AND NOW, this **21st** day of **June, 2023**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of KT, held on May 17, 2023, and May 24, 2023, it is hereby ORDERED and DECREED:

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

NOTICE TO NATURAL PARENT

PENNSYLVANIA ADOPTION MEDICAL HISTORY REGISTRY

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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/jel

cc. John Pietrovito, Esquire
Trisha Hoover Jasper, Esquire
Jeana Longo, Esquire
Angela Lovecchio, Esquire
Children & Youth
CASA
Gary Weber, Esquire
Jennifer E. Linn, Esquire