

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

IN RE:

TERMINATION OF PARENTAL :  
RIGHTS OF A.M., :  
AND C.R. :  
IN AND TO : NO. 12-9172  
F.M., :  
A MINOR :

Civil Law - Termination of Parental Rights - Grounds for  
Termination - Abandonment - Neglect - Removal - Best  
Interest Analysis - Significance of Dependency  
Court's Change in Goal from Reunification to Adoption  
- Impact of the Federal Adoption and Safe Families  
Act on Termination Proceedings - Children's Fast Track  
Appeal - Failure to File Timely Concise Statement

1. By statute, a two-step analysis must be undertaken by the court when making a determination whether parental rights should be terminated. First, the court determines whether the parent's conduct satisfies at least one of the nine statutory grounds for termination. Next, the court determines whether the best interests of the child will be served if parental rights are terminated.
2. Termination of parental rights under Section 2511 (a) (1) of the Adoption Act requires that for a period of at least six months immediately preceding the filing of a petition for termination the parent either (1) demonstrated a settled purpose of relinquishing parental rights or (2) refused or failed to perform parental duties.
3. Notwithstanding that a parent's conduct would justify termination under Section 2511 (a) (1) of the Adoption Act, before parental rights will be terminated, the court must consider whether the totality of the circumstances clearly warrant termination. When looking at the totality of the circumstances, three factors are primarily considered: (1) the parent's explanation for his or her conduct; (2) any post-abandonment contact between the parent and child; and (3) the effect termination will have on the child as required by Section 2511 (b) of the Adoption Act.
4. Termination of parental rights under Section 2511 (a) (2) of the Adoption Act requires that the following parental conduct

be established by clear and convincing evidence: (1) repeated and continued incapacity, abuse, neglect or refusal; (2) that such incapacity, abuse, neglect or refusal caused the child to be without essential parental care, control or subsistence; and (3) that the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.

5. The grounds for termination of parental rights under Section 2511 (a) (2) are not limited to affirmative misconduct. Such grounds may include acts of refusal as well as incapacity to perform parental duties. A parent who is incapable of performing parental duties is just as parentally unfit as one who refuses to perform the duties.
6. In contrast to the grounds for termination set forth in Section 2511 (a) (1) of the Adoption Act, Section 2511 (a) (2) does not emphasize a parent's refusal or failure to perform parental duties, but instead emphasizes the child's present and future need for essential parental care, control or subsistence necessary for his physical or mental well-being.
7. Termination of parental rights under Section 2511 (a) (5) of the Adoption Act requires that the following be established: (1) the child has been removed from parental care for at least six months; (2) the conditions which led to the child's removal or placement continue to exist; (3) the parents cannot or will not remedy the conditions which led to removal or placement within a reasonable period of time; (4) the services reasonably available to the parents are unlikely to remedy the conditions which led to removal or placement within a reasonable period of time; and (5) termination of parental rights would best serve the needs and welfare of the child.
8. A dependency court's decision in dependency proceedings to change the goal from reunification to termination and adoption is binding on the orphan's court in a termination proceeding as to the same factual issues, namely, that Children & Youth Services has provided adequate services to the parent but that the parent is nonetheless incapable of caring for the child.
9. Following an adjudication of dependency and placement in foster care, the child's best interests, not those of the parents, are given primary consideration when deciding between parental reunification or termination of parental rights. In the case of a child who has been in foster care

fifteen out of the most recent twenty-two months, and provided reasonable efforts at reunification have been made, the Federal Adoption and Safe Families Act contemplates that termination proceedings will have been begun and that the entire process will have been completed within eighteen months.

10. Once it has been established that a parent's conduct would justify terminating parental rights, termination nevertheless will not be granted unless the court also determines that the best interests of the child will be served by termination, taking into primary consideration the developmental, physical and emotional needs and welfare of the child.
11. The rules of appellate procedure require that in a children's fast track appeal a concise statement of the errors complained of on appeal be filed and served with the notice of appeal. Because of the unique nature of parental termination cases a failure to comply with this requirement will not automatically result in a finding of waiver.

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

IN RE:

TERMINATION OF PARENTAL :  
RIGHTS OF A.M., :  
AND C.R. :  
IN AND TO : NO. 12-9172  
F.M., :  
A MINOR :

Carole J. Walbert, Esquire	Counsel for Carbon County Children & Youth Office
Joseph V. Sebelin, Jr., Esquire	Counsel for C.R.
Cynthia A. Dyrda-Hatton, Esquire	Counsel for A.M.
Mark E. Combi, Esquire	Counsel for F.M.

MEMORANDUM OPINION

Nanovic, P.J. - February 19, 2014

A.M. (Father) and C.R. (Mother) (collectively Parents) are two young parents suffering from serious mental health conditions, complicated by drug and alcohol dependency. These conditions hindered Parents in adequately caring for their newborn daughter, F.M. For over a year and a half, Carbon County Children and Youth Services (CYS) offered Parents the services needed to cope with their circumstances and enable them to care for their daughter. Unfortunately, Parents did not take advantage of these services and their parental rights in F.M. were terminated. Father now appeals that termination.<sup>1</sup> For the reasons explained below, we

---

<sup>1</sup> Mother has not appealed this decision.

recommend that our Order terminating Father's parental rights be affirmed.

#### FACTUAL AND PROCEDURAL BACKGROUND

F.M. was born on October 27, 2010. (N.T., 2/19/13, p. 5). She is the biological daughter of Mother, who was seventeen years old at the time, and Father, who was then eighteen years of age. *Id.* On December 9, 2010, less than two months after F.M. was born, she was admitted to Gnaden Huetten Memorial Hospital with multiple bruises and a fractured left radius. *Id.* Because Parents could not explain F.M.'s injuries, CYS placed F.M. in emergency shelter care and filed a child abuse report against both Mother and Father. *Id.* at 8. In this report, both parents were indicated as having physically abused F.M.<sup>2</sup> *Id.*

On January 24, 2011, F.M. was adjudicated dependent.<sup>3</sup> *Id.* at 9. At this time a Family Service Plan (FSP) was implemented that Parents needed to comply with in order for F.M to be returned to their care. *Id.* The FSP required parents to participate in in-home services offered by JusticeWorks<sup>4</sup> and complete a parenting

---

<sup>2</sup> Mother appealed this finding, which was ultimately dismissed because CYS declined to proceed with her appeal. (N.T., 2/19/13, p. 8). Father also appealed but later withdrew his challenge. *Id.* Accordingly, Father's status remains as indicated for physical abuse of F.M. *Id.*

<sup>3</sup> In the dependency proceedings, this Court, per the Honorable Steven R. Serfass, found that aggravated circumstances existed due to the Father's physical abuse of F.M. *Id.* at 28; see also 42 Pa.C.S.A. §§ 6302 (Definition of "Aggravated Circumstances") and 6341 (c.1) and 6351 (f)(9) (effect of court finding of aggravated circumstances on dependency adjudication and disposition).

<sup>4</sup> These services included helping Parents with budgeting, making the home safe for F.M., teaching parenting skills, aiding Father in finding a job, providing

assessment, and required Father to complete an anger management assessment. *Id.* Parents initially complied with the FSP. *Id.* at 12. Consequently, after six months in foster care, on June 23, 2011, F.M. was returned to their care. *Id.* at 10. Nevertheless, F.M.'s status remained that of a dependent child. *Id.* at 11.

At first, F.M.'s return to Parents' care appeared successful. Parents had stable housing with Father's family, Father supported Mother and F.M. by working at a grocery store, and they continued to receive services from JusticeWorks. (N.T., 5/16/13, pp. 182-83). However, problems arose within a month of F.M.'s return, when on July 17, 2011, Mother overdosed on blood-pressure medication in an attempted suicide. (N.T., 2/19/13, p. 12).

A week after this suicide attempt, CYS asked Doctor John Seasock to perform a psychological evaluation of Parents. *Id.* Dr. Seasock's evaluation revealed that Parents suffered from serious mental health issues as well as drug and alcohol dependency that limited their ability to adequately care for F.M. Dr. Seasock diagnosed Mother with severe depression, psychotic features such as auditory and visual hallucinations, and borderline personality disorder. (N.T., 5/16/13, pp. 8-10). These conditions caused Mother to not understand F.M.'s cues to respond to her needs. *Id.*

---

drug screenings, and transporting Parents to various services. (N.T., 2/19/13, pp. 68-70).

at 11, 13. They also severely limited Mother's ability to care for herself. *Id.* at 12-13. Consequently, Dr. Seasock recommended, and the FSP then required, that another adult supervise Mother when she cared for F.M. *Id.*

Dr. Seasock diagnosed Father with bipolar disorder and polysubstance dependence. *Id.* at 19. Father suffered mood swings that caused him to turn violent and aggressive. *Id.* at 16. By the age of nineteen, Father had been psychiatrically hospitalized seven times, starting at the age of six, for violent and aggressive behavior. *Id.* at 16-17. Father abused drugs and alcohol to control his mood swings. *Id.* at 17. Unlike Mother, Dr. Seasock found that Father, while limited, was able to adequately care for F.M. *Id.* at 19-20.

Based on his evaluation, Dr. Seasock found the family to be at high-risk because, with Mother's inability to care for F.M., Father had to shoulder the majority of the parenting responsibilities. *Id.* at 21-22. Dr. Seasock feared that the stress of this responsibility would cause Father to turn aggressive or abandon the family, leaving Mother by herself with F.M. *Id.* at 22.

Based on Dr. Seasock's evaluation, the court-ordered FSP was amended to include the following conditions: (1) Parents to continue with JusticeWorks and follow its recommendations, (2)

Parents to complete parenting classes, (3) Parents to seek mental health treatment and follow any recommendations made, (4) Mother not to be left alone with F.M. for more than four hours, and (5) Father to complete anger management classes. The FSP was clear that if Parents failed to comply with these conditions, CYS would remove F.M. from their care.

To assist Parents in complying with the FSP, CYS offered Parents multiple services. In addition to the programs offered by JusticeWorks, CYS referred Parents to parenting classes offered by Right From the Start, referred Parents to mental health services through ReDCo, referred Father to drug and alcohol rehabilitation services, and referred Father to anger management classes through Care Net. (N.T., 2/19/13, pp. 13-18, 20).

Unfortunately, Parents did not utilize the services provided and did not comply with the FSP. First, Parents frequently prevented JusticeWorks from entering their home to provide services. *Id.* at 73. On occasions when JusticeWorks was allowed into the home, only Mother would participate, and on several visits, Father was verbally abusive to JusticeWorks' employees. *Id.* at 74-75. Second, Parents refused to participate in the parenting classes offered by Right From the Start. *Id.* at 14. Parents told CYS they did not need the classes. *Id.* at 15. Third, because Parents did not attend recommended outpatient counseling,



they were unsuccessfully discharged from RedCo's mental health treatment. *Id.* at 17-19. Fourth, because Father did not attend the required sessions, he was unsuccessfully discharged from anger management classes. *Id.* at 15-16. Finally, Father did not complete drug and alcohol treatment, which was later added to the FSP. *Id.* at 20, 31. This condition was added after Father tested positive for drugs on numerous occasions.<sup>5</sup> *Id.* at 19.

Because of Parents' hollow efforts to comply with the FSP, on December 22, 2011, CYS removed F.M. from Parents' care and returned her to emergency care. *Id.* at 20. F.M. has not been in Parents' care since that date. *Id.*

After F.M. was removed from their home, Parents' lives deteriorated. Father lost his job in December 2011, and he did not find employment for the next six months. (N.T., 6/17/13, pp. 73-74). By January 2012, Parents were homeless. (N.T., 2/19/13, p. 23). *Id.* at 23. During this time, they lived in their car, a motel, or with Mother's grandmother in Lehigh County, Pennsylvania. *Id.* at 23-24. JusticeWorks attempted to provide services to help Parents find shelter but Parents refused. *Id.* at 79-81. On February 1, 2012, JusticeWorks discharged Parents from

---

<sup>5</sup> Father tested positive for Vicodin, Xanax, Ativan, and marijuana on September 16, 2011; November 2, 2011; November 22, 2011; December 7, 2011; December 22, 2011; and January 25, 2012. (N.T., 2/19/13, p. 19). He also refused to take a drug test on October 21, 2011. *Id.* Father did not submit to drug tests from January 2012 to January 2013. (N.T., 6/17/13, p. 58).

its program for noncompliance. *Id.* at 79. Parents then stopped communicating with CYS from February 1, 2012, to the end of March. *Id.* at 23. During this two-month period, Parents had no contact with F.M. *Id.* at 25. From March 2012 to June 2012, despite having visitation rights, Parents' visits and contact with F.M. were infrequent. *Id.* at 27. Parents also continued not to comply with the FSP.

After close to a year of non-compliance with the FSP, and sixteen months after F.M. was adjudicated dependent, on June 1, 2012, F.M.'s placement goals in the dependency proceedings were changed from reunification to adoption. *Id.* at 34. Seven days later, on June 8, 2012, CYS petitioned to have Parents' parental rights over F.M. terminated. *Id.* At this time, the FSP required (1) Parents to complete parenting classes, (2) Parents to seek mental health treatment and follow recommendations, (3) Father to complete anger management classes, (4) Parents to submit to random drug tests, (5) Father to complete drug and alcohol treatment, (6) Parents to maintain financial stability, and (7) Parents to obtain and maintain stable housing. As of June 8, 2012, Parents complied with none of these requirements. *Id.* at 31-32.

On December 8, 2012, six months after the termination petition was filed, Dr. Seasock performed a second evaluation of Parents. (N.T., 5/16/13, p. 25). Dr. Seasock again diagnosed Mother with

depression, psychotic features, and borderline personality disorder. *Id.* at 26, 28. He found that these conditions still prevented Mother from meeting F.M.'s needs as a parent. *Id.* at 29-30. He opined that there was a low probability that Mother would ever develop the ability to adequately care for F.M. *Id.* at 30.

In his evaluation of Father, Dr. Seasock again diagnosed Father with bipolar disorder and polysubstance dependence. *Id.* at 39. He found that Father continued to use drugs and alcohol to deal with his anger and mood swings. *Id.* at 38. Dr. Seasock observed that Father's condition had deteriorated to the point that he was no longer able to adequately care for F.M. *Id.* at 40-41. While Dr. Seasock believed that with drug, alcohol, and mental health treatment Father would be able to adequately care for F.M. in the future, Dr. Seasock also noted that Father had demonstrated a pattern of not complying with drug and alcohol programs and not complying with mental health treatment. *Id.*

As part of his evaluation, Dr. Seasock performed a bonding assessment of the relationship between Parents and F.M. He found that no parental bond existed between F.M. and either Parent. *Id.* at 32-33, 43-44. Rather, he described the relationship which existed between F.M. and Parents as that which exists between playmates. *Id.*

Based on his evaluation, Dr. Seasock opined that F.M. should not be reunited with Parents. *Id.* at 36. Dr. Seasock testified that as of December 2012, Parents were unable to take care of themselves, much less F.M. *Id.* at 42. He concluded that since F.M. was not attached to either parent, she would suffer no harm if her Parents' rights were terminated.<sup>6</sup> *Id.* at 44.

Since December 22, 2011, when F.M. was removed from Parents' care for the second time, she has thrived living with her foster parents. F.M. was placed in the home of D.M. and E.M., who also take care of F.M.'s biological sister, K.M.<sup>7</sup> *Id.* at 22. When F.M. initially began living with D.M. and E.M., she threw screaming tantrums. (N.T., 5/16/13, p. 94). After several months, these tantrums stopped, and she has become a much more outgoing, confident, and happier child. *Id.* at 94, 96-97. F.M. has developed a strong relationship with D.M. and E.M., as well as with K.M. and a third child living with them. D.M. and E.M. would

---

<sup>6</sup> Dr. Seasock was also concerned with the dangers of reuniting F.M. with Parents after she had been removed from their home for such a long period of time. (N.T., 5/16/13, p. 45). According to Dr. Seasock, when a child is between the ages of zero and five and is removed from the home for a period of eighteen to twenty-four months, the child suffers significant emotional, psychiatric, and bonding issues if the child is then reunited with his or her parents. *Id.* at 34. As of the June 17, 2013, hearing date, F.M. had been removed from Parents' home for eighteen straight months and twenty-four total months. *Id.* at 45. As of the date of this appeal, F.M. has been removed from Parents' home for twenty-five straight months and thirty-one total months.

<sup>7</sup> On October 11, 2011, Parents had a second child, K.M. (N.T., 2/19/13, p. 22). Parents voluntarily terminated their parental rights with regard to K.M. *Id.* As of May 2013, E.M. and D.M. were in the process of adopting K.M. (N.T., 5/16/13, p. 93).

like to adopt all three children. *Id.* at 97, 99, 111. While in E.M. and D.M.'s care, F.M. has undergone ear surgery and received speech therapy to treat speech issues. *Id.* at 94-96, 101.

We held hearings on CYS's petition to terminate Parents' parental rights on February 19, 2013; May, 16, 2013; and June 17, 2013. At the close of the June hearing, Parents requested a third evaluation from Dr. Seasock and an opportunity to provide proposed findings of facts and conclusions of law. We allowed Parents to submit these findings. After carefully reviewing the record and these findings, we denied the request for a third evaluation and terminated Parents' parental rights. Father then timely appealed our termination. We now file this opinion in accordance with Pa.R.A.P. 1925(a).

#### DISCUSSION

We begin our discussion by noting that Father did not file a Concise Statement of Matters Complained of on Appeal with his Notice of Appeal. Father's appeal has been designated a children's fast track appeal. Under Pa.R.A.P. 1925(a)(2)(i), in a fast track appeal, "[t]he concise statement of errors complained of on appeal shall be filed and served with the notice of appeal required by Rule 905." When an appellant does not comply with this provision, the appeal is defective. In re K.T.E.L., 983 A.2d 745, 747 (Pa. Super. 2009). This defect, however, does not cause the appeal to

be automatically dismissed. *Id.* Rather, an appeal will be dismissed on this basis only if there has not been substantial compliance with the rules and the other party has been prejudiced thereby. *Id*; see also In re J.T., 983 A.2d 771, 774-75 (Pa. Super. 2009) (recognizing "unique nature" of parental termination cases and holding that a "late filing of a required rule 1925 statement does not mandate a finding of waiver").

After Father failed to file a timely concise statement, we ordered him to file a concise statement within twenty-one days. Provided Father complies with this order, we anticipate CYS will suffer no prejudice and the appeal should proceed. However, because of the limited time we have had to file this opinion, the delay in receiving Father's concise statement has prevented us from addressing any specific issues Father may raise.<sup>8</sup> Accordingly, we are limited in this opinion to setting forth the reasons why Father's parental rights were terminated.<sup>9</sup>

#### Grounds for Termination

The termination of parental rights is controlled by statute, 23 Pa.C.S.A. § 2511 *et seq.* Under Section 2511, the trial court must engage in a bifurcated process. The initial focus is on the conduct of the parent. The party seeking termination must prove by clear and convincing evidence that the parent's conduct satisfies at least one of the nine

---

<sup>8</sup> By notice dated January 30, 2014, we were advised by the Deputy Prothonotary for the Superior Court that receipt of the original record in this case is due February 21, 2014.

<sup>9</sup> We also refer the Superior Court to our Final Decree of December 27, 2013, wherein we made thirty-four separate findings of fact.

statutory grounds in Section 2511(a). If the trial court determines that the parent's conduct warrants termination under Section 2511(a), it must engage in an analysis of the best interests of the child under Section 2511(b), taking into primary consideration the developmental, physical, and emotional needs of the child.

In re B.C., 36 A.3d 601, 606 (Pa. Super. 2012) (citations omitted).

We terminated Father's parental rights under 23 Pa.C.S.A. Sections 2511(a)(1), (2), and (5).<sup>10</sup> These sections and Section 2511(b) provide:

(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

---

<sup>10</sup> We note the standard of review for an appeal of an order terminating parental rights. For an appeal from such an order, an appellate court "is limited to determining whether the order of the trial court is supported by competent evidence, and whether the trial court gave adequate consideration to the effect of such a decree on the welfare of the child." In re Z.P., 994 A.2d 1108, 1115 (Pa. Super. 2010) (citation omitted). "Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand." *Id.*

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.

\* \* \* \* \*

(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.

23 Pa.C.S.A. § 2511(a)(1), (2), (5), and (b). The evidence offered overwhelmingly supported terminating Father's parental rights under these provisions.

(1) Section 2511(a)(1)

We begin with our analysis under Section 2511(a)(1). Under this provision, parental rights can be terminated if "[t]he 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.” *Id.* To terminate parental rights under this provision, CYS must first prove that during this six-month period Father either (1) demonstrated a settled purpose of relinquishing parental rights or (2) refused or failed to perform parental duties. In re J.T., 983 A.2d at 776-77.

Once CYS makes this showing, we must consider whether the totality of the circumstances clearly warrant termination. In re B., N.M., 856 A.2d 847, 855 (Pa. Super. 2004), appeal denied, 872 A.2d 1200 (Pa. 2005). When looking at the totality of the circumstances, our courts primarily look at three factors. In re J.T., 983 A.2d at 777. First, the court analyzes the parent’s explanation for his or her conduct. *Id.* Second, the court analyzes post-abandonment contact between parent and child. *Id.* Finally, the court analyzes the effect termination will have on the child as required by 23 Pa.C.S.A. § 2511(b). *Id.*

Consistent with this approach, we found that Father evidenced a settled purpose of relinquishing his parental claim and refused or failed to perform parental duties during the applicable six-month period. These duties are broad, and involve both the tangible and intangible aspects of being a parent.

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, [courts have] 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.'

In re B., N.M., 856 A.2d at 855.

CYS filed its petition to terminate Father's parental rights on June 8, 2012. Thus, the applicable six-month period is December 8, 2011 to June 8, 2012. During this time, Father performed few, if any, parental duties.

CYS removed F.M. from Father's custody, on December 22, 2011, and she continues to live in foster care until the present. (N.T., 2/19/13, p. 20). Despite having visitation rights with F.M. while she was in foster care, Father did not visit or contact F.M. at all for two months, and for the remaining four months, his visits and contact were infrequent and limited. *Id.* at 25, 27.

Nor for more than six months did Father provide F.M. with any of the basic physical necessities of subsistence: food, shelter or clothing. Between December 8, 2011 and June 8, 2012, and since, Father played little to no part in F.M.'s life and performed little to no parental duties. This lack of interaction has diminished

his relationship with his daughter to the point that she no longer views him as her father, but as a playmate. (N.T., 5/16/13, pp. 43-44).

In examining a parent's explanation for failing to perform parental duties, we must consider all explanations offered. In re K.Z.S., 946 A.2d 753, 758 (Pa. Super. 2008). "The pertinent inquiry is not the degree of success a parent may have had in reaching the child, but whether, under the circumstances, the parent has utilized all available resources to preserve the parent-child relationship." In re Shives, 525 A.2d 801, 803 (Pa. Super. 1987) (citation omitted). Included in this effort is the need for the parent to exercise reasonable firmness in resisting obstacles placed in the path of maintaining a parent-child relationship. In re B., N.M., 856 A.2d at 855 (citation omitted).

At the hearing, Father testified he did not perform his parental duties because he lacked transportation to visit F.M. or to get to services made available to him. (N.T., 6/17/13, pp. 34, 41). However, JusticeWorks offered to transport Father to visit F.M., or to any appointment he needed to attend to comply with the FSP. (N.T., 2/19/13, pp. 58, 81). Father refused this assistance. *Id.* at 81. Father also testified that his family was willing to provide transportation and did provide transportation. (N.T., 6/17/13, p. 48). Clearly, the issue was not one of transportation.

We are also cognizant that Father struggled to perform his parental duties because of financial difficulties, mental health issues, and drug and alcohol dependency. While these issues certainly impacted Father's ability to perform his parental duties, and while CYS was responsible for providing Father with services and did provide Father with services to cope and overcome these problems, CYS is not a "guarantor of the success of efforts to help parents assume their parental duties." In re Diaz, 669 A.2d 372, 377 (Pa. Super. 1995) (citation omitted). It was Father's responsibility to take advantage of the services provided by CYS to address his personal difficulties and to maintain an active role in his daughter's life. He did not do so. Consequently, Father's explanation for not performing his parental duties is unavailing.

We next look at Father's post-abandonment contact with F.M.

To be legally significant, the [post-abandonment] contact *must be steady and consistent* over a period of time, contribute to the psychological health of the child, and must demonstrate a serious intent on the part of the parent to recultivate a parent-child relationship and must also demonstrate a willingness and capacity to undertake the parental role. The parent wishing to reestablish his parental responsibilities bears the burden of proof on this question.

In re Z.P., 994 A.2d 1108, 1119 (Pa. Super. 2010) (emphasis added).

Legally significant post-abandonment contact can either rebut an inference that a parent had an intent to relinquish parental rights

or explain why a parent did not perform parental duties. In re Adoption of Durham, 467 A.2d 828, 831-32 (Pa. Super. 1983).

Here, Father's post-abandonment contact with F.M. was anything but steady and consistent. Rather, of the weekly one-hour visits which were scheduled for Father to spend time with F.M. after December 22, 2011, Father inexplicably missed roughly a third.<sup>11</sup> (N.T., 2/19/13, pp. 40-41). By inconsistently attending these weekly visits with F.M. and by not complying with the FSP for eight months after the termination petition was filed, Father demonstrated neither a serious intent to recultivate a parental relationship with F.M. nor the capacity to undertake a parental role in F.M.'s life. Instead, Father's actions suggest at best only a tangential interest in F.M.'s welfare.

The final question is whether terminating Father's parental rights was in the best interests of F.M. This analysis focuses on "whether termination of parental rights would best serve the developmental, physical, and emotional needs and welfare of the child." In re T.D., 949 A.2d 910, 920 (Pa. Super. 2008) (citation omitted), appeal denied, 970 A.2d 1148 (Pa. 2009). "The emotional needs and welfare of the child have been properly interpreted to

---

<sup>11</sup> Father missed several visits because of conflicts with his work schedule, because either he or F.M. was sick, because of weather, and because Father was incarcerated. (N.T., 2/19/13, pp. 40-41). We did not count these missed visits for this calculation. If we had, Father would have missed more than half of his scheduled post-abandonment visits with F.M.

include '[i]ntangibles such as love, comfort, security, and stability.'" In re T.S.M., 71 A.3d 251, 267 (Pa. Super. 2013) (citation omitted). The court must also "discern the nature and status of the parent-child bond, paying close attention to the effect on the child of permanently severing the bond." In re T.M.T., 64 A.3d 1119, 1127 (Pa. Super. 2013) (citation omitted). On this question, it was in F.M.'s best interests to terminate Father's parental rights.

While living with her foster parents, F.M. has thrived. F.M. has developed a strong relationship with her foster parents and the two other children living with them, one of whom is F.M.'s biological sister, K.M. F.M.'s foster parents, E.M. and D.M., plan to adopt all three of the children now in their care. (N.T., 5/16/13, pp. 97, 99).

For almost half her life, E.M. and D.M. have provided for F.M.'s developmental, physical, and emotional needs. They have ensured that she received needed medical treatment. When F.M. entered E.M. and D.M.'s care, she struggled with her speech. *Id.* at 94. E.M. and D.M. arranged for F.M. to have ear surgery and receive speech therapy, which combined to greatly improve her speech. *Id.* at 94-96, 101. Since F.M. has been living with E.M. and D.M., she is a more outgoing, confident, and happier child. *Id.* at 94, 96-97.

Dr. Seasock testified that if Father's parental rights are terminated, F.M. will suffer no negative effects. Dr. Seasock stated that a parental bond did not exist between Father and F.M. *Id.* at 43-44. Rather, he described the relationship between Father and F.M. as that between playmates. *Id.* Because no parental bond exists, Dr. Seasock opined F.M. would suffer no trauma or emotional harm if Father's rights were terminated. *Id.* at 44.

By comparison, F.M. considers D.M. and E.M. to be her parents. A parental bond has developed between them which is beneficial to F.M.'s continued physical, mental, and emotional development. We believe this relationship will be strengthened by allowing D.M. and E.M. to adopt F.M. and for F.M. to become a firm part of their family, together with K.M. and the other child now in their care. (N.T., 2/19/13, p. 35).

After taking these facts into consideration, we found it was in F.M.'s best interests to terminate Father's parental rights. F.M. has developed a strong bond with her foster care parents, who have provided F.M. with a stable and loving home, and treat her as their own. She will suffer no negative effects from the termination. Rather, her best interests will be promoted by allowing her to remain with her foster parents, by allowing her foster parents to adopt her, and by allowing the bond between them to grow. See In re J.F.M., 71 A.3d 989, 997-98 (Pa. Super.

2013) (holding it was in a child's best interests to terminate parental rights when child would not suffer negative effects from termination and child had bonded with foster parents who had provided for child's needs).

(2) Section 2511(a)(2)

Next, we found the evidence established grounds for termination under Section 2511(a)(2). To terminate parental rights under this provision, the evidence must establish: "(1) repeated and continued incapacity, abuse, neglect or refusal; (2) that such incapacity, abuse, neglect or refusal caused the child to be without essential parental care, control or subsistence; and (3) that the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied." In re Z.P., 994 A.2d at 1117.

Unlike subsection (a)(1), subsection (a)(2) does not emphasize a parent's refusal or failure to perform parental duties, but instead emphasizes the child's present and future need for essential parental care, control or subsistence necessary for his physical or mental well-being. Therefore, the language in subsection (a)(2) should not be read to compel courts to ignore a child's need for a stable home and strong, continuous parental ties, which the policy of restraint in state intervention is intended to protect. This is particularly so where disruption of the family has already occurred and there is no reasonable prospect for reuniting it.

*Id.*

Further, "[t]he grounds for termination of parental rights under Section 2511(a)(2) . . . are not limited to affirmative



misconduct." *Id.* (citation and quotation marks omitted). Such "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). "[A] parent who is incapable of performing parental duties is just as parentally unfit as one who refuses to perform the duties." In re Adoption of S.P., 47 A.3d 817, 827 (Pa. 2012) (citation and quotation marks omitted). "Thus, while sincere efforts to perform parental duties, can preserve parental rights under subsection (a)(1), those same efforts may be insufficient to remedy parental incapacity under subsection (a)(2)." In re Z.P., 994 A.2d at 1117.

Applying these principles to the facts before us, first, the evidence established that Father was incapable, neglected, or refused to parent F.M. when he did not comply with the FSP for almost a year before the termination petition was filed. See In re Adoption of W.J.R., 952 A.2d 680, 687-88 (Pa. Super. 2008) (holding that a parent's failure to comply with the FSP established requisite incapacity, abuse, neglect or refusal to parent); In re K.Z.S., 946 A.2d at 761 (holding mother's failure to comply with FSP and ISP goals and objectives established continued incapacity). Second, Father's failure to comply with the FSP and to address the issues sought to be addressed therein

caused F.M. to be removed from the home and to be without essential parental care, control and subsistence.

Finally, Father's repeated inability to comply with the FSP for almost two years as of the date of the last hearing held established that Father cannot or will not remedy the conditions described therein, including his mental health and drug and alcohol dependency. See In re A.S., 11 A.3d 473, 482 (Pa. Super. 2010) (holding that "[t]he scope of CYs's involvement with the family indicates that Father has been and remains unable or unwilling to remedy the conditions that led to Children's placement"); In re K.Z.S., 946 A.2d at 762 (holding mother's repeated and prolonged failure to comply with FSP requiring mother to obtain housing and employment established mother could not or would not remedy this condition).

While Father has recently taken steps to comply with the FSP, we regard the steps he has taken as disingenuous because, as our courts have repeatedly stated, 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." In re Z.P., 994 A.2d at 1117. This characterization is supported by Dr. Seasock's testimony that Father has shown a pattern of not complying with mental health or drug and alcohol treatment. See also In re Adoption of S.P., 47 A.3d at 830 (quoting

with approval statement that "where a [parent's] ability to parent his child in the foreseeable future is 'speculative at best,' . . . termination of parental rights under section 2511(a)(2) [is justified] even if the parent expresses a willingness to parent the child"). In short, "Father's overall parenting history revealed no genuine capacity to undertake his parental responsibilities, and [CYS's] evidence was sufficient to terminate his parental rights under subsection (a)(2)." In re Z.P., 994 A.2d at 1126.

(3) Section 2511 (a) (5)

We also found that the evidence supported terminating Father's parental rights under Section 2511(a)(5). To terminate parental rights under this provision, the evidence must establish:

(1) the child has been removed from parental care for at least six months; (2) the conditions which led to the child's removal or placement continue to exist; (3) the parents cannot or will not remedy the conditions which led to removal or placement within a reasonable period of time; (4) the services reasonably available to the parents are unlikely to remedy the conditions which led to removal or placement within a reasonable period of time; and (5) termination of parental rights would best serve the needs and welfare of the child.

In re B.C., 36 A.3d 601, 607 (Pa. Super. 2012).

Under the first element, we consider whether the child has been removed from the parent's care for a period of at least six months. In re A.S., 11 A.3d at 482. F.M. has been removed from Father's care twice. The first time was from December 10, 2010,

to June 23, 2011, for a period of six months. (N.T., 2/19/13, p. 10). More recently, F.M. was removed from Father's care on December 22, 2011, and has remained so until the present time. By the time of the first hearing held on February 19, 2013, F.M. had been removed from parental care for almost fourteen months.

The second element requires us to determine whether the conditions which led to F.M.'s removal continue to exist. F.M. came into the care of CYS because of her parents' inability to provide appropriate parental care. Several FSPs were implemented to address identified parenting deficits. Specifically as to Father, as of F.M.'s most recent removal Father was in violation of the following requirements of the existent FSP: (1) he refused to participate or cooperate with the in-home services offered by JusticeWorks;<sup>12</sup> (2) he had not completed parenting classes; (3) he had not obtained mental health treatment and followed recommendations; (4) he had not completed anger management classes; and (5) he had not completed drug and alcohol treatment.

None of these requirements, which were later supplemented prior to the filing of the termination petition to include the need to maintain financial stability and stable housing, had been met as of the first day of hearing. Nevertheless, as of the final

---

<sup>12</sup> As a result, Parents were unsuccessfully discharged from this program on February 1, 2012. This was significant given the services provided. See note 4 supra.

hearing held on June 17, 2013, Father had completed programs at White Deer Run that included drug and alcohol treatment, as well as classes for parenting and anger management. (N.T., 6/17/13, pp. 41-43). He was also receiving by this date treatment which began in April of 2013 for his mental health issues. *Id.* at 38. Father's participation and acceptance of this treatment were all conditions of his release on bail after he was arrested for breaking into two churches, a bar, and twenty cars. *Id.* at 67, 71. As of the date of this final hearing, Father had not been convicted or sentenced on these charges.

Notwithstanding this last minute treatment which occurred more than two years after F.M. was removed from Parents' care the first time, and more than a year after her removal the second time, it is at best uncertain, and more likely doubtful, given Father's longstanding history of drug and alcohol abuse and struggles with mental health, that these issues have been put to rest. The program at White Deer Run was a total of two months, as was Father's treatment for mental health. As of the June 2013 hearing, Father had maintained sobriety from drugs and alcohol for only one month. (N.T., 6/17/13, pp. 41-43). Additionally, as of this date, he had attended psychological counseling for only two months. *Id.* at 38. While this treatment was important, we are not convinced that

either Father's drug and alcohol, or mental health issues, have been resolved.

This belief is backed by Dr. Seasock's testimony. Dr. Seasock testified that Father had a history of relapses with drugs and alcohol, and of not maintaining mental stability. (N.T., 5/16/13, pp. 40-41). To show stability and progression, Dr. Seasock testified Father would need to abstain from drugs and alcohol and evidence psychological constancy for a minimum of six months. *Id.* at 62. At the time of the June hearing, Father's short period of compliance, together with his past history of unsuccessful treatment and the compulsory nature of the treatment he received secondary to his criminal charges, was not enough to convince us that these conditions no longer exist. See In re S.H., 879 A.2d 802, 806-07 (Pa. Super. 2005) (holding that parent's drug and alcohol abuse continued to exist despite parent completing treatment because parent needed to show a sober lifestyle for several years), appeal denied, 892 A.2d 824 (Pa. 2005).

The next step requires us to determine whether Father is likely to remedy the conditions which led to F.M.'s removal or placement within a reasonable period of time. As already noted, more than two years passed after F.M. was first removed from Father's care before he made any serious effort to address his drug and alcohol and related mental health issues, and only then

when his physical freedom was at stake. By the age of nineteen Father had been hospitalized seven times for violent and aggressive behavior. He self-medicated on drugs and alcohol, and when tests were requested to assess abuse, he frequently tested positive or refused to be tested. See footnote 5 *supra*. Moreover, Father has a past history of not remaining sober or maintaining mental stability. (N.T., 5/16/13, pp. 40-41). Consequently, it appears unlikely that Father's most recent treatment will break that pattern.

To show real progress, Dr. Seasock testified Father would need to abstain from drugs and alcohol and maintain mental stability for six months. *Id.* at 62. Considering the amount of time F.M. had been out of Father's care by the time of the June 17, 2013 hearing - eighteen months - and the likely effect of this absence,<sup>13</sup> we found that to delay these proceedings further to again evaluate Father's status after four or five months would be unreasonable. We were unwilling to place F.M.'s life on hold for another four to five months, concluding that Father had not and likely would not remedy the conditions which led to F.M.'s placement within a reasonable time period. See In re Adoption of M.E.P., 825 A.2d 1266, 1276 (Pa. Super. 2003) ("A child's life simply cannot be put on hold in the hope that the parent will

---

<sup>13</sup> See note 6 *supra*.

summon the ability to handle the responsibilities of parenting."); see also B.,N.M., 36 A.3d at 856 ("[A] parent's basic constitutional right to the custody and rearing of his or her child is converted, upon the failure to fulfill his or her parental duties, to the child's right to have proper parenting and fulfillment of his or her potential in a permanent, healthy, safe environment."). See also In re K.Z.S. wherein the Court stated:

[A]lthough Mother has worked hard and may have improved the conditions that led to the removal and placement of [Child], Mother did not begin to remedy these conditions within a reasonable time. She did not begin to improve these conditions until six months after the Petition for Involuntary Termination was filed.

946 A.2d at 761-62.<sup>14</sup>

For the fourth element, we review whether the services reasonably available to Father were unlikely to remedy the

---

<sup>14</sup> There is a direct correlation between Pennsylvania law on the termination of parental rights and the federal Adoption and Safe Families Act ("ASFA"). At some point, to wit eighteen months, the process of either reunification or adoption for a child who has been placed in foster care is to be completed. As stated in In re J.T.:

The Adoption and Safe Families Act, 42 U.S.C. § 671-675, imposes upon states the requirement to focus on the child's needs for permanency rather than the parent's actions and inactions. The amendments to the Juvenile Act, 42 Pa.C.S. § 6301, et seq., provide that a court shall determine certain matters at the permanency hearing, including whether the child has been placed into foster care for 15 out of the last 22 months. See 42 Pa.C.S. § 6351(f)(9). With regard to permanency planning, the Legislature contemplated that, after reasonable efforts have been made to reestablish the biological relationship, the process of the agency working with foster care institutions to terminate parental rights should be completed within eighteen months. In re N.W., 859 A.2d 501, 508 (Pa. Super. 2004).

983 A.2d 771, 776 n. 9 (Pa. Super. 2009). The ASFA "was designed to curb an inappropriate focus on protecting the rights of parents when there is a risk of subjecting children to long term foster care or returning them to abusive families." In re C.B., 861 A.2d 287, 295 (Pa. Super. 2004), appeal denied, 871 A.2d 187 (Pa. 2005).



conditions which led to F.M.'s removal or placement within a reasonable period of time. These services include those made available to Father by CYS. As to such services, we first note the legal significance of F.M.'s goal change from reunification to adoption in the dependency proceedings.

As a practical and legal matter, an order by the juvenile court changing the child's placement goal from reunification to adoption ends any dispute that may exist between CYS and the parent as to the adequacy of CYS' services aimed at reuniting the parent with his/her children and, of course, as to whether CYS had selected the most appropriate goal for this family. By allowing CYS to change its goal to adoption, the trial court has decided that CYS has provided adequate services to the parent but that he/she is nonetheless incapable of caring for the child and that, therefore, adoption is now the favored disposition. In other words, the trial court order is the decision that allows CYS to give up on the parent.

Interest of M.B., 565 A.2d 804, 807-08 (Pa. Super. 1989), appeal denied, 589 A.2d 692 (Pa. 1990). The dependency court's factual finding that CYS provided adequate services for reunification and Father was nonetheless incapable of providing for F.M., is binding upon us. In re J.A.S., 820 A.2d 774, 781 (Pa. Super. 2003); see also In the Interest of Lilley, 719 A.2d 327, 332 (Pa. Super. 1998) ("If a parent fails to cooperate or appears incapable of benefiting from reasonable efforts supplied over a realistic period of time, the agency has fulfilled its mandate and upon proof of satisfaction of the reasonable good faith effort, the termination petition may be granted.").

In addition, "once a child is removed from the care of the parent, the burden is on the parent to take action to regain parental rights." In re B.C., 36 A.3d at 609. When a child is in foster care, the parent has an affirmative parental duty to complete the services CYs requires to have the child returned. In re Julissa O., 746 A.2d 1137, 1141 (Pa. Super. 2000). This duty, "at minimum, requires a showing by the parent of a willingness to cooperate with the agency to obtain the rehabilitative service necessary for the performance of parental duties and responsibilities." In re Adoption of Steven S., 612 A.2d 465, 470 (Pa. Super. 1992) (citation omitted), *appeal denied*, 625 A.2d 1194 (Pa. 1993).

The FSP required Father to complete classes with JusticeWorks, to complete parenting classes, to seek mental health treatment and comply with recommendations from that treatment, to complete drug and alcohol rehabilitation, to complete anger management classes, to maintain financial stability, and to obtain and maintain stable housing. CYs made available to Father the services he needed to comply with the FSP, including parenting classes by Right From the Start, mental health services through ReDCo, drug and alcohol rehabilitation services, anger management classes through Care Net, and JusticeWorks services to help Father find a job and housing. (N.T., 2/19/13, pp. 13-18, 20, 68-70).

Despite CYS's good faith efforts, Father either refused or stopped participating in the services made available. *Id.* As a result, Father did not comply with a single FSP requirement. *Id.* at 31. See In re A.R.M.F., 837 A.2d 1231, 1240 (Pa. Super. 2003) (holding that evidence of parent not utilizing past services established that future services would not reasonably be effective). Given the protracted history of this case and Father's failure to comply with the FSPs established by CYS, we concluded that the assistance and services provided by CYS and while Father was on bail, were not likely to remedy Father's parenting deficits.

Finally, as already discussed above, terminating Father's parental rights will serve F.M.'s best interests. Accordingly, the grounds for terminating Father's parental rights under Section 2511(a)(5) were met.

#### CONCLUSION

Parents needed help to care for F.M. Their mental health and drug and alcohol dependency limited their ability to adequately care for her, with the end result establishing grounds for the removal of their daughter from their care and for the filing of a termination petition.

For over a year, CYS offered Parents help to overcome their parenting deficits, including various parenting, mental health, and drug and alcohol services. It was Parents' responsibility to

use these services to overcome the conditions which led to the removal of their daughter from their care and to perform their parental duties. When Parents failed to do so, the best interests of their daughter required termination of their parental rights.

Based on the foregoing, we recommend that our Order terminating Father's parental rights be affirmed.

BY THE COURT:

---

P.J.