

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

**In Re: X.F.O.,
minor child of
S.N.K. and V.O., Jr.**

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: NO. 2009 – 0037
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: INVOLUNTARY TERMINATION
: OF PARENTAL RIGHTS
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OPINION OF THE COURT

This matter is before the Court on the Petitions for Involuntary Termination of Parental Rights pursuant to Sections 2511 and 2512 of the Adoption Act, filed by Northampton County Department of Human Services, Children, Youth and Families Division (“Agency”) against S.N.K. (“Mother”) and V.O., Jr. (“Father”), related to their natural child, X.F.O., along with the Agency’s simultaneous request for a goal change from “return to parent” to “adoption.”

A hearing on the petitions was held before the undersigned on May 18, 2010, and briefs have been submitted by the Agency and Father.¹ This matter is now ready for adjudication.

¹ The guardian ad litem for X.F.O. joined in the Proposed Findings of Fact and Conclusions of Law filed by the Agency. A copy of the transcript of the May 18, 2010 hearing was forwarded to Mother and Mother was instructed by the Court to submit a brief. No brief was received by the Court from Mother as of July 14, 2010.

FINDINGS OF FACT

1. This matter is a petition for the involuntary termination of parental rights and a request to change the goal in the dependency to adoption, filed by the Agency. See, Notes of Testimony, May 18, 2010 ("N.T.") at 4, 6.

2. There is one child that is the subject of this action: X.F.O., born March 8, 2007. N.T., at 4, 10, 32. The interests of X.F.O. were represented by his guardian ad litem, John W. Rybak, Esquire. N.T. at 10-11.

3. The natural father of the child is V.O., Jr., born July 21, 1982. Father appeared and was represented by counsel, Lisa Spitale, Esquire. N.T. at 6, 32

4. The natural mother of the child is S.N.K., born February 10, 1984. Mother appeared *pro se*. N.T. at 7-11. Mother obtained a continuance of the trial several months earlier upon her representation that she would be able to retain counsel, but she had agreed that the matter would proceed at this scheduling in the event that she did not retain counsel. N.T. at 7-11. Mother represented herself at trial. N.T. at 11.

5. The Agency requested that the Court take judicial notice of all orders entered in the underlying dependency, *In the Interest of X.O.*,

at Docket Number CP-48-DP-38-2007 or Juvenile No. 2007-0095. N.T. at 75-76. Without objection from any party, the Court took such judicial notice. *Id.*

6. X.F.O. tested positive for phencyclidine (“PCP”) at birth. N.T. at 99-100.

7. At the time of X.F.O.’s birth, Mother and Father were residing together at 71 A Ramblewood Lane in Bethlehem, Pennsylvania. N.T. at 101.

8. Due to the concerns associated with X.F.O. testing positive for PCP, Debra Breckon, RN (“Ms. Breckon”) of the Visiting Nurse Association of St. Luke’s Hospital became involved with the family on or about March 23, 2007, to perform home visitations to monitor X.F.O., as well as to provide parenting instruction to Mother and Father. N.T. at 99-101. This service began prior to any dependency proceedings.²

9. Ms. Breckon was initially scheduled to meet with Mother and Father between one (1) and three (3) times per week for one hour per session. N.T. at 100. However, for about the first three months that Ms. Breckon was involved with the family, Father met with her on only two (2) occasions, even though she attempted to accommodate his schedule. N.T. at 100-101, 116. Ms. Breckon also noted that there were at least two occasions when Father was at home for the sessions,

² An emergency Order placing X.F.O. in the custody of the Agency was issued on June 26, 2007. X.F.O. was adjudicated dependent on September 12, 2007.

but that he “didn’t want to participate . . . he was doing other things.”

Id. Father testified that his participation was “on and off.” N.T. at 161.

10. Ms. Breckon documented a variety of concerns about Mother’s parenting and behavior, even prior to any dependency action. N.T. at 102-104.

11. Ms. Breckon’s first concern was Mother’s continued denial of drug use, despite the fact that X.F.O. had tested positive for PCP at birth. N.T. at 102.

12. Ms. Breckon was also concerned because Mother was not home for a scheduled parenting session on or about April 17, 2007. When Ms. Breckon was able to reach Mother later in the day, at approximately 4:30 p.m., Mother’s speech was “real slurred, kind of disorganized, not making sense.” According to Ms. Breckon Mother said that “she was . . . real hung over,” and had been at C.R. Fanny’s where she had been in a dispute with a security guard who took money from her, and then she went to the police. N.T. at 102.

13. Ms. Breckon testified that she was concerned that Mother was placing baby food in with X.F.O.’s formula, at ten weeks, which was contrary to accepted infant feeding practices. N.T. at 103. Additionally, on at least three occasions that Ms. Breckon witnessed, Mother was feeding X.F.O. by propping his bottle while he was lying in his crib out of

Mother's site, thereby placing him at risk of choking. N.T. at 103. Ms. Breckon had previously instructed Mother not to feed X.F.O. in this manner due to the risk of choking. N.T. at 103.

14. Ms. Breckon further indicated she was concerned that Mother had neglected to take X.F.O. to a doctor's appointment and failed to obtain treatment of X.F.O.'s eye infection. N.T. at 102-104.

15. On or about June 4, 2007, Ms. Breckon found a handgun and bullets laying unsecured on a dresser at the residence of Father and Mother. N.T. at 104.

16. Mother informed Ms. Breckon that she and Father were "fighting," and Father stated that "the police were coming to the apartment." N.T. at 104.

17. Mother stated to Ms. Breckon that she believed the police were following her and Father and that her telephone was tapped. N.T. at 104.

18. On or about June 7, 2007, Mother informed Ms. Breckon that she had "again" tested positive for PCP because Father "made her smoke [it] . . . as an early Father's Day present." N.T. at 105.³

19. The allegations of domestic violence between Mother and Father are deemed to be credible.

³ Mother later admitted that she recanted that statement.

20. On or about June 28, 2007, a shelter care hearing was held before Master Samuel P. Murray, Esquire, and an emergency order issued returning X.F.O. to his mother's physical custody. However, the Agency was granted legal custody. See, N.T. at 105; see also, Corrected Shelter Care Order, dated July 16, 2007.

21. The June 28, 2007 Order required Mother to reside with the child and Mother's grandparents. N.T. at 106.

22. Pursuant to the June 28, 2007 Order, Father was not residing with Mother and the child, N.T. at 106, 162. Father testified that he moved to his mother's home. N.T. at 162.

23. From June 28, 2007 until the time of the dependency adjudication, Father had only one visit with X.F.O., on July 18, 2007, because he did not call to schedule visits as instructed. N.T. at 107. At trial, Father acknowledged that he did not visit, "early on, when . . . [X.F.O.] was at the [great-]grandparents house." N.T. at 163.

24. Ms. Breckon noted that visits between X.F.O. and Mother were "okay," but her grandmother "was stepping in and providing care" during the parenting sessions. N.T. at 107-108.

25. X.F.O. was adjudicated dependent on September 12, 2007, and placed in the legal and physical custody of the Agency. See, September 12, 2007 Order of Adjudication and Disposition.

26. At the initial dependency, X.F.O. was placed in kinship foster care with his maternal great-grandparents. See, September 12, 2007 Permanency Plan/Court Directive and Interim Order, at Paragraph 3.

27. At the dependency adjudication, Mother was directed to 1) maintain stable income and housing; 2) cooperate with a psychological evaluation by Philip Kinney, PhD and comply with any recommended counseling; 3) follow through with drug and alcohol counseling with Valley Counseling Group; 4) cooperate with random drug screening at New Directions; 5) cooperate with parenting education and life skills training with the Visiting Nurse Association of St. Luke's Hospital; and 6) participate in supervised visits with the child. See, September 12, 2007 Permanency Plan/Court Directive and Interim Order, at Paragraph 11, 7, 8, 9, 10, 5.

28. Similarly, Father was directed to 1) maintain stable income and housing; 2) perform a paternity test; 3) participate in a drug and alcohol intake at Lehigh Valley Drug and Alcohol; 4) cooperate with random drug screens at New Directions; 5) participate in a domestic violence assessment and follow through with all recommended treatment; 6) cooperate with parenting education and life skills training with the Visiting Nurse Association of St. Luke's Hospital; and

7) participate in supervised visits with the child. See, September 12, 2007 Permanency Plan/Court Directive and Interim Order, at Paragraph 17, 16, 12, 13, 14, 16, 5.

29. Father testified that he performed the drug and alcohol evaluation, and completed a six-month program of urine screens, with negative results for controlled substances. N.T. at 164.

30. Philip Kinney, PhD, a licensed psychologist, was admitted and testified as an expert in the field of psychology. N.T. at 142-143. Dr. Kinney performed the psychological evaluation on Mother on or about December 11, 2007. N.T. at 143.

31. Dr. Kinney reported that in discussing the concerns which led to the dependency, Mother said that these involved her "testing positive for PCP, . . . having some difficulties with stability" in her residence and employment, and "making some 'little' parenting mistakes." N.T. at 145.

32. Mother denied using PCP while pregnant, saying that she had used it only once in her life. She believed her positive test was due to inhaling second hand smoke. N.T. at 145. Mother said she had smoked marijuana "a couple of times . . . during high school" and used "cocaine for a couple of months" when she was seventeen years of age. N.T. at 146.

33. Mother admitted to a mental health treatment history which included a number of psychiatric medications, a diagnosis of bipolar disorder, a diagnosis of post-partum depression, a diagnosis of insomnia, and group therapy for drug and alcohol abusers which she had stopped attending. N.T. at 148. At the time of the evaluation, Mother indicated that she was involved in treatment at Valley Counseling Group. N.T. at 148.

34. Dr. Kinney noted a below average work history, evidenced by the fact that Mother had seven jobs by the time she was twenty-two years of age and her admission of being terminated for not reporting for work. Mother, however, stated she was working full time at the time of the evaluation. N.T. at 148-149.

35. Mother reported to Dr. Kinney that she did not have much social life and was attempting to distance herself from associates with drug and alcohol problems or who engaged in criminal activity. N.T. at 149. She described herself as getting along relatively well with others. N.T. at 149.

36. Dr. Kinney's evaluation of Mother, however, revealed anti-social personality tendency, which would predict a "difficulty with substance abuse . . . [the] law and stability in work, as well as histories of outbursts and disregard [of] the rights of others." N.T. at 150. Dr.

Kinney concluded that persons of this nature tend to be "irritable," exhibit "dishonesty" and react aggressively when angered. N.T. at 150.

37. Dr. Kinney believes that Mother is suffering from attention deficit hyperactivity disorder, instead of bipolar disorder, which was born out by a history of impulsivity, overreaction and problems with job stability. N.T. at 151.

38. Mother's profile as reported by Dr. Kinney indicates that she is likely to have superficial relationships, have trouble forming emotional ties, and focuses on others as a means for her personal gain. N.T. at 152. Dr. Kinney noted that she demonstrated verbal and physical aggression in her relationship with Father, as well as being rebellious against authority and opposition to being directed. N.T. at 152.

39. In Dr. Kinney's evaluation, Mother was described as knowledgeable about X.F.O.'s development. N.T. at 153-154. She acknowledged her parenting mistakes relating to X.F.O. and, although she wanted the child returned to her, acknowledged that he was likely "attached to his caregivers." N.T. at 153-154.

40. Dr. Kinney noted that Mother "correctly thought that it might be difficult for [X.F.O.] to adjust to a return to herself and that he might prefer where he lives with his current caretakers. They were

stable people where her life at that time was something of a mess to put it appropriately.” N.T. at 154.

41. Dr. Kinney’s evaluation recommended individual therapy, possibly psychiatric medication, parenting education through the Visiting Nurse Association, and random urine screens to monitor drug use. N.T. at 154-155.

42. The initial permanency review in the dependency occurred on or about February 6, 2008. This review concluded that Mother was 1) substantially compliant with services; 2) consistently attended drug and alcohol treatment; 3) successfully discharged from urine screens; and 4) her parenting skills were considered to be improving by the Visiting Nurse Association. See, February 6, 2008 Permanency Hearing Determinations and Order, at Paragraph 7. Additionally, Ms. Breckon noted that Mother was more attentive to the child at the end of 2007, and she was speaking less about “partying” and domestic discord between her and Father. N.T. at 108.

43. The first permanency review concluded that Father maintained employment, completed his drug and alcohol assessment, and provided several negative urine screens. However, he failed to complete the domestic violence assessment, and had only a single visit with X.F.O., as well as only one parenting session. See, February 6, 2008 Permanency Hearing Determinations and Order, at Paragraph 7.

44. Mother and Father began residing together in late 2007 or early 2008. See, February 6, 2008 Permanency Hearing Determinations and Order, at Paragraph 7. According to Ms. Breckon, Mother informed her that she and Father had been living together "all along, but they just did not tell their caseworker she was living in Allentown." N.T. at 108.

45. The first permanency review directed Mother to again maintain stable income and housing, engage in mental health counseling and drug and alcohol treatment at Valley Counseling Group, continue parenting education, and participate in visits with X.F.O. See, February 6, 2008 Permanency Plan/Court Directive and Interim Order, at Paragraph 10, 7, 8, 9, 5, 6.

46. The first permanency review directed Father to maintain stable income and housing, take a paternity test, cooperate with parenting education, submit to random drug screens and a domestic violence assessment at Valliere and Associates, and participate in visits with the child. See, February 6, 2008 Permanency Plan/Court Directive and Interim Order, at Paragraph 13, 15, 12, 11, 14, 5, 6.

47. A permanency review was held on or about April 30, 2008. The review concluded that Mother and Father were each visiting consistently with X.F.O., and both parents were considered to have made progress in their abilities to care for X.F.O. However, the service

was directed to continue. *See, April 30, 2008 Permanency Review Order, Permanency Plan—Compliance, and April 30, 2008 Permanency Plan/Court Directive and Interim Order, at 9 and 11.*

48. At the April 30, 2008 review, it was noted that Mother was unsuccessfully discharged from mental health and drug and alcohol treatment, and had not yet reinitiated those services. She was directed to continue these services. *See, April 30, 2008 Permanency Review Order, Permanency Plan—Compliance, and April 30, 2008 Permanency Plan/Court Directive and Interim Order, at 7 and 8.*

49. At the April 30, 2008 review, Father was noted to have maintained employment and submitted negative urine screens. However, he failed to comply with domestic violence treatment. The domestic violence treatment was again ordered at the April 30, 2008 permanency review. *See, April 30, 2008 Permanency Review Order, Permanency Plan—Compliance, and April 30, 2008 Permanency Plan/Court Directive and Interim Order, at 13.*

50. At the April 30, 2008 permanency review, X.F.O. was returned to the physical custody of Mother and Father, with the Agency maintaining legal custody, so long as the parents continued to reside with the maternal great-grandparents. *See, April 30, 2008 Permanency Plan/Court Directive and Interim Order, at Paragraph 2, 3.*

51. Shortly thereafter, Ms. Breckon noted that problems resumed, with Mother missing a parenting session the very next day on May 1, 2008. N.T. at 108.

52. Both parents attended sessions with Ms. Breckon on June 2, 2008, June 18, 2008, June 30, 2008 and July 28, 2008. N.T. at 119. Ms. Breckon noted that at the sessions the parents attended, they were attentive to the child. N.T. at 120.

53. On July 28, 2008, Ms. Breckon arranged to meet Mother and Father at eleven o'clock in the morning, but found both Father and Mother still asleep when she arrived. N.T. at 109.

54. At the July 28, 2008 visit, after he awoke, Father told Ms. Breckon that he did not need to participate in sessions because the service was no longer in the court order. Father argued with Ms. Breckon, walked away and "did not really participate in the visit." N.T. at 109.

55. Ms. Breckon said that sometime after her last session with Father on July 28, 2008, he called and requested that she "become the foster parent for" X.F.O. because she was "the only person he trusted." N.T. at 121.

56. Ms. Breckon reported that during a session on August 11, 2008, Mother told her that Father had moved out because of a fight. Ms. Breckon described Mother at this session as having "slurred

speech,” “glassy eyes,” “pressured speech,” and that Mother was “real disorganized.” N.T. at 111. In discussing the parenting session, Ms. Breckon recounted that Mother refused to change X.F.O.’s diaper, handing the child to her grandmother, who had lifting restrictions due to recent cataract surgery. Thereafter, Mother asked Ms. Breckon to help her change the diaper, because she did not want to get diaper ointment under her long fingernails. N.T. at 111.

58. On or about August 12, 2008, Mother was operating an automobile that struck a telephone pole. N.T. at 57-58. The vehicle then traveled another one hundred twenty (120’) feet and struck a building in Fountain Hill Borough, Lehigh County, Pennsylvania. N.T. at 57-58. The Agency called Officer David Apgar (“Apgar”) to testify about the incident. N.T. at 57-58.

59. Mother was the only person at the vehicle and Apgar observed Mother “rummaging through” the vehicle. Mother appeared confused, excited and disoriented. N.T. at 59.

60. When asked at the scene about the accident, Mother repeatedly responded, “my feet came off the wheel,” according to the officer. N.T. at 60.

61. As Officer Apgar was speaking with Mother at the scene, he observed mother repeatedly looking for something inside the front of her pants and other areas of her clothing. N.T. at 61.

62. Based upon his observations, Apgar concluded that Mother was operating a vehicle under the influence of alcohol or a controlled substance. N.T. at 62.

63. Apgar testified that when he informed Mother that she would be transported to St. Luke's Hospital for a medical evaluation, Mother threw a "temper tantrum . . . started to scream, flop around and almost curl in a fetal position." N.T. at 62-63.

64. At the hospital, Mother tested positive for PCP. Cocaine and a snorting device were recovered from her personal belongings. N.T. at 63-67.

65. As a result of that incident, Mother was charged with driving under the influence of a controlled substance and possession of cocaine.

66. When she was arrested after being treated at the hospital, Mother said that the drugs, which were apparently found in her underwear, did not belong to her and she attempted to explain that "a girl who does her wash hid drugs . . . in her clothing." N.T. at 65.

67. Mother was subsequently placed in a holding cell where she apparently attempted to hang herself with her clothing, which she tied together and then tied to a fixture in the cell. N.T. at 66-67. As a result, Mother was returned to the hospital and committed for mental health reasons. N.T. at 68.

68. After Mother and Father moved from the home of Mother's grandparents, X.F.O. was removed from the physical and legal custody of Mother and Father. This occurred on or about August 27, 2008. However, X.F.O. remained with Mother's grandparents as kinship foster parents. See, August 27, 2008 Change of Placement Order.

69. A permanency review was held on or about September 24, 2008, at which it was noted that Mother was not involved in counseling because she lost her medical assistance after moving out of her grandparents' home. It was also noted that the parenting educator was expressing concerns about Mother's ability to retain instructions. See, September 24, 2008 Permanency Review Order, at Paragraph 3(a).

70. At the same review, the order noted that Father 1) had been inconsistent with visits after X.F.O. was returned to Agency custody; 2) was confrontational with the Visiting Nurse Association representative; and 3) had not as yet completed domestic violence treatment. See, September 24, 2008 Permanency Review Order, at Paragraph 3(b).

71. The September 24, 2008 review order notes for both Mother and Father that "earlier progress has been lost . . . [and] some of the identical issues . . . present at the outset of the dependency"

were being demonstrated by the parents. *See, September 24, 2008 Permanency Review Order, at Paragraph 5(a) and 5(b).*

72. Following the review, Mother and Father were each directed to maintain stable income and housing. Mother was directed to mental health and drug and alcohol treatment at Haven House and to submit to random drug screens at SASSI. Father was again directed to become involved with domestic violence treatment. *See, September 24, 2008 Permanency Plan/Court Directive and Interim Order, at 8, 9, 5, 6, 7, 10.*

73. Ms. Breckon noted the family was discharged from the Visiting Nurse Association services on or about September 26, 2008, after Mother's arrest and hospitalization. Ms. Breckon also noted that Mother was apparently incarcerated for an alleged simple assault on Father. N.T. at 112.

74. The February 11, 2009 permanency review order noted that Mother was being evicted from the apartment, having separated from Father. The order further notes that Mother was not engaged in drug treatment, and submitted to only six (6) of thirteen (13) scheduled urine screens, with one (1) being positive for a controlled substance. Further, the order notes that Mother had not progressed in alleviating the circumstances that led to the original dependency. *See, February 11, 2009 Permanency Review Order, at Paragraph 3(a), 5(a) and (b).*

75. The February 11, 2009 permanency review order notes that Father 1) had not been visiting with X.F.O.; 2) had not completed the domestic violence evaluation; and 3) was facing charges of driving under the influence and accidents involving death or serious bodily injury in Lehigh County, Pennsylvania. Further, the order notes that Father has not accomplished any progress in alleviating the circumstances that led to the original dependency. See, February 11, 2009 Permanency Review Order, at Paragraph 3(b) and 5(b).

76. The services for each of the parents following the February 11, 2009 permanency review remained identical to those recommended at the previous review. See, February 11, 2009 Permanency Plan/Court Directive and Interim Order.

77. Jennifer Delong testified that she was the Agency caseworker for the family from February of 2009 through August of 2009. N.T. at 77.

78. When Ms. Delong began working with the family, Father was required to maintain stable housing and income, participate in a drug and alcohol evaluation and follow-up with recommended treatment, and participate in domestic violence or anger management treatment. N.T. at 78.

79. Ms. Delong reported that Father was employed at a warehouse. She also stated that Father had two residences during the

time Ms. Delong was involved in this matter, an apartment with a paramour, and thereafter he had moved in with his mother. N.T. at 90, 93.

80. Ms. Delong stated that while she was involved in this matter, she was only able to speak to Father twice on the telephone and met with him once, on or about March 25, 2009. N.T. at 78, 91-92.

81. Ms. Delong stated that Father's drug and alcohol evaluation did not recommend continued treatment, but the domestic violence evaluation at Forensic Treatment recommended individual and group counseling. N.T. at 78-79.

82. Ms. Delong discussed the need for domestic violence treatment with Father during the March 25, 2009 meeting, but he indicated "he was not sure he was going to comply" because he was facing a prison sentence. N.T. at 79, 93. Ms. Delong nonetheless explained the referral pursuant to the permanency plan to him, as well as the contact information. N.T. at 93.

83. Ms. Delong said Father attended a portion of a visit with X.F.O with Mother on March 25, 2009, and arrived at another of Mother's visits, "at the very end." N.T. at 79, 92. These were Father's only two visits with X.F.O. during a period of approximately six months. N.T. at 80.

84. While Ms. Delong was involved, Father did not express an interest in serving in a parental role for X.F.O. Rather, he put forward his mother as a potential custodian or said that he “wished [Mother] could do it.” N.T. 91-92, 95-96. Ms. Delong stated that Father’s mother did not contact her about the child. N.T. at 92.

85. Mother was required to maintain stable income and housing, participate in drug and alcohol counseling, individual counseling, and parenting education. N.T. at 77.

86. Mother was working in a barbershop for a number of months in 2009, then obtained a “better job working in a warehouse,” as Ms. Delong characterized it. During Ms. Delong’s involvement, Mother lived in an apartment in Allentown, Pennsylvania. N.T. at 83-84. Mother stated that she was concerned with the violence in that neighborhood, and subsequently moved back in with her grandparents in the late summer or early fall of 2009. N.T. at 84.

87. Ms. Delong testified that her initial contact with Mother occurred by telephone on December 16, 2008, when she was fielding calls as the “in-day worker”. N.T. at 80. During that call, Mother admitted to “doing blowbacks” with Father, which may have caused her to test positive for PCP.⁴ Mother also stated during this call that on another occasion she borrowed a cigarette that may have been dipped

⁴ Ms. Delong testified that from her understanding a “blowback” is where “one person blows into the end of the instrument and the other person blows in as well to get the immediate high.” N.T. at 81-82.

in PCP, but was unaware of it when she smoked it. N.T. at 81-82. At trial, Father denied ever engaging in a “blowback” with Mother. N.T. at 164.

88. During this same telephone call, Mother asked to be referred to a drug treatment provider near where she lived and worked in Allentown, Pennsylvania. N.T. at 82. When Ms. Delong became the caseworker, Mother was not involved in treatment, and was referred to Valley Counseling Group. N.T. at 80, 82.

89. Ms. Delong indicated that Mother was missing urine screens in early 2009 because she arrived late after work. This concern was addressed by permitting her to test at Valley Counseling Group. N.T. at 82-83.

90. When Ms. Delong began supervising the family, X.F.O. was residing in kinship foster care with his maternal great-grandparents. N.T. at 85.

91. Ms. Delong testified that Mother was receiving two hours of visitation at the Agency in early 2009, but her attendance was inconsistent. N.T, at 84-85.

92. The Agency was concerned that while Mother was not attending visits at the Agency, and not yet fully compliant with urine screens or drug treatment, she would visit the child at the kinship

home. Due to that concern, X.F.O. was removed from the kinship home on or about April 15, 2009. N.T. at 85-86.⁵

93. After X.F.O. was removed, Ms. Delong noted that Mother attended all visits at the Agency. N.T. at 85. Ms. Delong stated those visits, which she was supervising, “always . . . [went] well,” but that X.F.O. separated routinely from Mother without crying at the end of visits. N.T. at 87.

94. At the July 15, 2009 permanency review, the order notes that although Mother was visiting consistently with X.F.O., she had been unemployed except for several weeks immediately prior to the hearing, only recently re-engaged with counseling, and had missed a significant number of urine screens. See, July 15, 2009 Permanency Review Order, at Paragraph 3(a) and 5(a).

95. The July 15, 2009 Order reflects that Father made no progress since he had no involvement with services to address the issues that led to the dependency and had minimal contact with X.F.O. See, July 15, 2009 Permanency Review Order at Paragraph 5(b).

96. At the conclusion of the July 15, 2009 hearing, Mother was directed to maintain stable income and housing, submit to counseling and urine screens at Valley Counseling Group, comply with in-home services, and engage in supervised visits. See, July 15, 2009

⁵ Ms. Delong stated that Mother would not attend a visit at the Agency but would then visit X.F.O. at her grandparents house in “what we considered not a safe supervised setting.” N.T. at 86.

Permanency Plan/Court Directive and Interim Order, at Paragraph 9, 7, 8, 5, 6. Father was to maintain stable income and housing, and again comply with individual and group counseling for domestic violence at Valliere and Associates. See, July 15, 2009 Permanency Plan/Court Directive and Interim Order, at Paragraph 10, 11, 5, 6.

97. Mother began treatment with Melissa Hightower at Valley Counseling Group in early 2009, although she had been seen at Valley Counseling Group in 2007 by another therapist. N.T. at 14.

98. Melissa Hightower, a licensed social worker in Pennsylvania, holding a master's degree in social work, as well as being a certified addictions counselor with ten years experience treating individuals with substance abuse and mental health problems, was permitted to testify as an expert in drug treatment and treatment of mental disorders. N.T. at 12-13

99. Mother's diagnosis at the time of trial was bipolar disorder, and polysubstance abuse, involving primarily alcohol, PCP and cocaine, with current active use of PCP and alcohol. N.T. at 16-17.

100. Ms. Hightower noted that Mother was prescribed a mood stabilizer, Tegretol, by a psychiatrist, but she was unwilling to take the medication. N.T. at 17-18

101. Mother's treatment was initially scheduled at an intensive level, six hours of group therapy, and one to two hours of individual

therapy, which was then reduced to one session each of group and individual therapy each week. N.T. at 14-15.

102. It was reported that Mother “had difficulty” in attending sessions initially, then “settled into treatment and began to make significant progress,” until her attendance drastically subsided in the weeks before trial. N.T. at 15.

103. Mother missed twenty three (23) of forty six (46) individual counseling sessions at Valley Counseling Group. Mother also missed sixteen (16) of the thirty one (31) scheduled group sessions. N.T. at 15.

104. Ms. Hightower testified that initially Mother did not understand “addiction,” and did not understand that behaviors and relationship patterns can lead to risks for those who abuse controlled substances. Mother also was not able to cope with stressors at the beginning of her treatment, and lacked good social support. N.T. at 16.

105. Adam Carbone, the general manager and laboratory director for SASSI, testified that when Mother was initially referred to SASSI for urine screens, from November 6, 2008 through May 19, 2009, Mother failed to appear at about twenty-five (25) weekly urine screens, and she submitted one positive screen for PCP on November 13, 2008. N.T. at 126, 130, 131-132.

106. Jose Alex Carillo testified he was the Agency caseworker for X.F.O. and his parents for approximately ten months, from August of 2009 through the time of trial. N.T. at 32.

107. Mr. Carillo explained that under the July 15, 2009 permanency plan, Father was to comply with a domestic violence assessment, which was previously started but not completed, and was to engage in individual and group counseling for domestic violence. N.T. at 33, 46.

108. Mr. Carillo stated that Father was not involved with the recommended services when Mr. Carillo began his involvement and that Father did not wish to begin services with Mr. Carillo because he was facing incarceration. N.T. at 43. Mr. Carillo observed that Father had not done "anything at all," concerning services. N.T. at 56.

109. Father was subsequently incarcerated in Lehigh County Prison for accidental death while driving under suspension, a second offense driving under the influence charge, and driving under suspension. Father remained at Lehigh County prison at the time of trial. N.T. at 42, 166. At trial, Father reported that he entered a guilty plea to these charges. N.T. at 166-167. Father reports that he began his sentence in October 2009 and he will not be eligible for parole until July 2, 2011. N.T. at 176-177.

110. Father had only one visit with X.F.O. during the ten-month period when Mr. Carillo was assisting the family. Father also did not attempt any other communication with X.F.O during this period. N.T. at 43, 47-48.

111. When Mr. Carillo began his involvement, Mother was moving from an apartment in Allentown, Pennsylvania to her maternal grandparents' home, where she apparently resided until being arrested on a bench warrant immediately prior to trial. N.T. at 33, 9.

112. Mother was employed at a warehouse job until late in 2009, but complained that she was unable to meet the production requirements of her employer. Thereafter, she began working at C.R. Fanny's and then Good Fellows, as an exotic dancer. N.T. at 34.

113. Mother dismissed concerns Mr. Carillo expressed regarding the late hours and exposure to alcohol at C.R. Fanny's and Good Fellows saying that she would not be drinking alcohol, had worked previously as a dancer, and needed the money. N.T. at 34-35.

114. Based upon her progress in drug treatment in the latter part of 2009, the Agency planned to return X.F.O. to Mother's care. N.T. at 35. The Agency provided an additional in-home service through the Visiting Nurse Association to assist with the transition home. Ms. Breckon became re-involved for that purpose on or about January 11, 2010. The visits, previously supervised at the Agency, were changed to

unsupervised in the home of Mother's grandparents. N.T. at 35, 39.
N.T. at 113.

115. Towards the end of 2009, Melissa Hightower said that Mother was confronting the issues noted for her in the drug and mental health counseling, was positively involved in treatment, and looked like she was "going to be okay." N.T. at 18.

116. This positive trend reversed, however, apparently at about the time Mother began working as an exotic dancer. Mother became "obstinate" and "argumentative" in her sessions, denied her substance abuse and mental health concerns and her need for help. N.T. at 18-19. Mother was ejected from several sessions because she could not participate without arguing. N.T. at 19.

117. Mother began talking about the Agency being in conspiracy against her, along with the urine testing company. N.T. at 19.

118. Ms. Hightower specifically recalled an incident occurring on or about September 22, 2009, when Mother arrived for a group session incoherent and physically uncoordinated. Ms. Hightower stated that she appeared to be "obviously" under the influence of a controlled substance. N.T. at 19-20. Urine screens for alcohol and some controlled substances, and were negative, but the testing did not screen for PCP. N.T. at 20.

119. Ms. Hightower attempted to discuss the situation with Mother the following week. However, Mother maintained that she had not been incoherent, and there was no need for her to be examined at the hospital. Instead, Mother accused Ms. Hightower of “lying” and “trying to set her up.” N.T. at 20-21.

120. The last permanency review before the trial in this matter was held on or about January 13, 2010. The order notes that Mother had been compliant with services, but that by attending a counseling session “where she appeared to be under the influence calls into question whether she has addressed her drug problem and is capable of caring for the Juvenile at . . . [that] time.” See, January 13, 2010 Permanency Review Order, at Paragraph 3(a) and 5(a).

121. The January 13, 2010 Order notes that Father is incarcerated and not participating in services, and describes his progress as “minimal” in addressing the concerns that led to the dependency. See, January 13, 2010 Permanency Review Order, at Paragraph 3(b) and 5(b).

122. The Agency was found to have engaged in reasonable efforts to achieve the permanency plan for the child, and the goal was to return the child home. See, February 6, 2008 Permanency Hearing Determinations and Order, at Paragraph 8, 11. See *also*, September 24, 2008 Permanency Review Order, at Paragraph 4; February 11, 2009

Permanency Review Order at Paragraph 4; July 15, 2009 Permanency Review Order at Paragraph 4; January 13, 2010 Permanency Review Order, at Paragraph 5.

123. The Agency was found to have engaged in reasonable efforts to achieve the permanency plan for the child at all permanency reviews in the dependency, and the goal was to return the child home. See, February 6, 2008 Permanency Hearing Determinations and Order, at Paragraph 8, 11. See *also*, September 24, 2008 Permanency Review Order, at Paragraph 4; February 11, 2009 Permanency Review Order at Paragraph 4; July 15, 2009 Permanency Review Order at Paragraph 4; January 13, 2010 Permanency Review Order, at Paragraph 5.

124. Ms. Hightower indicated that during sessions with Mother she had discussed information obtained from the Agency showing Mother had submitted urine screens positive for PCP, and Mother attempted to explain such results by asserting that "someone at the club" who "admitted to using . . . [it]" apparently "had mistakenly switched cigarettes" with her. N.T. at 22.

125. Thereafter, on January 6, 2010, Mother was re-referred to SASSI and she tested positive for PCP on February 12, 2010. N.T. at 132.

126. Subsequent to the February 12, 2010 urine screen, Mother tested positive for the same controlled substance on February 15, 2010,

February 25, 2010 and March 4, 2010. N.T. at 132. Additionally, she had eight (8) samples through the date of trial rejected as “under-temperature,” indicating tampering with the sample. N.T. at 133-135.

127. After the previous scheduling for the termination of parental rights proceedings on March 15, 2010, Ms. Hightower testified that she and Mother discussed necessary steps for treatment, but that after several sessions, Mother again rejected a suggestion that she take mental health medication, was increasingly incoherent, became belligerent, and denied having any problems although she appeared under the influence. N.T. at 24-25.

128. Mother consistently failed to attend appointments with Ms. Hightower. Ms. Hightower testified that in total, Mother attended nineteen (19) of forty-two (42) individual, and fifteen (15) of thirty-one (31) group sessions. Further, Ms. Hightower noted that in the last several months Mother “missed, came late or left early, or rescheduled and did not keep . . . [that] appointment.” Ms. Hightower noted that Mother had not attended an individual counseling session for three weeks prior to the hearing. N.T. at 15.

129. Ms. Hightower testified that she has “serious concerns about [Mother’s] ability to make sound . . . judgments, consistent with being able to maintain normal activities . . . [of] daily living.” Further, she testified that her “[m]ental health symptoms have become much

more apparent and flamboyant . . . imping[ing] on . . . [her] ability to conduct normal activities and to be able to care for . . . [her]self in a reasonable manner.” N.T. at 28.

130. Ms. Hightower testified that she “found her [Mother’s] behavior has become very impulsive, drug seeking behaviors.” N.T. at 28.

131. Ms. Hightower explained that although she was not aware of Mother’s current substance abuse pattern due to lack of treatment, it appeared Mother requires continued outpatient drug and alcohol treatment and psychiatric care. N.T. at 29. Ms. Hightower also observed that Mother had recently engaged in “a lot of manipulation regarding trying to get her own way rather than actually benefitting from the treatment” such as attempting to enroll in inpatient treatment in order to help her maintain her parental rights to X.F.O., notwithstanding that she was “staunchly denying” current substance abuse. N.T. at 29-30.

132. Ms. Hightower ultimately concluded that Mother had made no progress over the course of fifteen (15) months of treatment. N.T. at 31.

133. Mr. Carillo attempted to discuss with Mother her behavior at Valley Counseling on December 22, 2009, but she denied consumption of drugs or alcohol, attributing her symptoms to stress

principally due to Father's recent incarceration. N.T. at 36, 52. Further, Mother blamed her subsequent positive urine screens on staff at the drug screen facility being influenced by "gang members," and "setting her up." N.T. at 38.

134. After Mother's positive urine screen for PCP on February 12, 2010, Mother's visits with X.F.O. were returned to supervised at the Agency due to concerns about X.F.O.'s safety. N.T. 38, 40. This change occurred on or about March 8, 2010. N.T. at 113.

135. Ms. Breckon reported that Mother has attended all visits with X.F.O. since Ms. Breckon resumed supervision in January 2010. N.T. at 113.

136. Mother's grandmother participates in a portion of the visits between Mother and X.F.O. N.T. At 113. Ms. Breckon stated that she suggested that the grandmother be excluded because "[X.F.O.] would go to her so easily over" or instead of Mother. N.T. at 123.

137. Ms. Breckon notes that in the recent visits Mother needed reminders to interact with X.F.O. instead of simply sitting and watching him. Additionally, in a visit on April 12, 2010, Mother went into a playhouse in the visiting room and fell asleep. Ms. Breckon observed that Mother's eyes were closed, and the child said "Mommy, wake up." N.T. at 114.

138. Mr. Carillo supervised approximately four visits between Mother and X.F.O. Mr. Carillo indicated that while Mother and X.F.O. interact "pretty well," the child simply sits in her lap. N.T. at 40-41. He also observed that X.F.O. apparently enjoys "more interaction" with his great-grandparents "most of the time," in comparison to Mother. N.T. at 40-41.

139. X.F.O. refers to Mother as "Shantel" or "Mommy Shantel." N.T. at 42.

140. Mr. Carillo notes that the great-grandparents take good care of the child, but he does not believe them to be capable of caring for him on a daily basis. N.T. at 48-49, 50-51.

141. Mr. Carillo testified about his observations of X.F.O. in the foster home, noting that X.F.O. is comfortable in the home and refers to his foster parents as "Mommy" and "Daddy." N.T. at 41. Mr. Carillo believed that it would be detrimental to move X.F.O. from the foster home because of X.F.O.'s close relationship with the foster parents, having resided there for about thirteen months, since he was removed from his great-grandparents' home. N.T. at 45-46, 42, 74, 85-86.

142. The foster parents are willing to adopt X.F.O. N.T. at 42.

143. Amy Fries is the Diakon foster care worker for X.F.O., and had carried out that role for approximately ten months at the time of trial. N.T. at 70.

144. Ms. Fries testified that she meets X.F.O. twice monthly in the foster home for approximately one hour. She also transports X.F.O. to visits with Mother. N.T. at 70-71.

145. In the foster home, X.F.O. is doing "very well," and has reached all developmental milestones. N.T. at 71, 74-75.

146. Ms. Fries indicated that X.F.O. has a "strong attachment" to his foster parents, noting that he "runs to them," "talks about them the entire way to and from visits," looks to them to "for his needs," such as when he is hurt or hungry, and refers to them as "Mom and Dad." N.T, at 71. Ms. Fries concluded that X.F.O. has a "strong attachment" to his foster parents, as well as another child in the home. N.T. at 71, 72-73.

147. Ms. Fries said that X.F.O. typically will call Mother by only her first name, "Shantel," and only occasionally as "Mommy Shantel." NT. at 71. She observed that X.F.O. likely has a greater attachment to his great-grandmother than to Mother. N.T. at 72. Although X.F.O. requests that Mother accompany him to the parking lot at the end of visits, he separates easily and does not cry. N.T. at 72.

148. Ms. Fries testified that X.F.O. does not speak about Father. N.T. at 73.

149. Mr. Carillo testified that he has never heard X.F.O. discuss Father, and that when X.F.O. is talking about "daddy" or "dad," he is speaking of the foster father. N.T. at 42.

150. Father has not discussed with Mr. Carillo resuming any role as a parent for X.F.O. Rather, Father planned to defer to Mother to maintain the parental role, at first, and, upon being served with the petition to terminate his parental rights, he offered that the child's paternal grandmother be a resource for X.F.O. N.T. at 43-44.

151. Further, at trial, Father conceded that he would be unavailable to act as a parent to X.F.O. for at least the next fourteen (14) months while he is incarcerated. Father stated that it would be appropriate to have Father's mother or another family member take custody of the child, even though X.F.O. had only a few contacts with them nearly two years ago. N.T. at 185-186. As a strategy for permanency, this scenario is not credible and fails to serve the child's interest in permanency.

152. In a May 6, 2010 telephone call, Mother asked Jennifer Delong about a home study for her grandparents to be a resource for X.F.O. Ms. Delong reported that she informed Mother that the request had been previously submitted. N.T. at 88, 90.

153. During the May 6, 2010 telephone call, Mother complained about her urine screens, and her speech was described as slurred,

leading Ms. Delong to ask Mother if she was under the influence. N.T. at 88-89. Mother reportedly denied being under the influence, saying that she had bitten her tongue. N.T. at 89.

154. Father testified at the termination of parental rights trial, admitting that "I didn't cooperate with . . . visits very much," and he agreed with Ms. Breckon's assessments of his cooperation with parenting. N.T. at 180, 169-170.

155. Father testified that he was unaware that he was expected to perform any domestic violence treatment, claiming that he was confused and had already submitted to the evaluation. N.T. at 182.

156. Father acknowledged at trial that the March 15, 2008 report of his evaluation was performed to determine whether he posed a risk to his child, and while the evaluator was unable to conclude that he posed no risk to the child, it recommended that he participate in treatment, given the allegations by Mother. N.T. at 175-176. Moreover, although he initially attempted to assert that he was unaware of his treatment obligations until immediately before he entered prison, Father admitted that he had at least a year to participate in it before his incarceration. N.T. at 176, 166.

157. Father eventually conceded that he did not attend the group counseling because he "didn't want to participate in it because it was all made up." Father admitted that he decided not to participate

because he did not agree with Mother's allegations of domestic violence. N.T. at 184.

158. Mother testified at the trial. She offered allegedly innocent excuses for all or virtually all instances where she tested positive for PCP. These excuses included 1) unknowingly smoking a cigarette laced with the substance; 2) secondhand smoke while being around others who were smoking PCP; and 3) the substance was sprayed in her face prior to her arrest on August 12, 2008. N.T. at 188-189, 191-192. None of these explanations is deemed to be credible.

159. Mother conceded that she had told her caseworker that Father forced her to ingest PCP during the dependency, although she later recanted that version of events. N.T. at 191.

160. Mother denied having an addiction to PCP, saying that she is involved with drug treatment merely to cooperate with the Agency. N.T. at 193.

161. Mother attempted to contend that "she has done everything as far as with the Visiting Nurse . . . for parenting skills, I have been present in his life. I go to all his visits. I have a good bond with my son. I never done anything to harm my son." N.T. at 198. Mother's testimony is not founded on the evidence of record and is deemed not credible.

DISCUSSION

Involuntary termination of parental rights proceedings require that we make our determinations using the standard of clear and convincing evidence. *In re A.L.D., Jr.*, 797 A.2d 326 (Pa. Super. 2002). This standard requires evidence “that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts in issue.” *Id.* at 336. The Agency bears the burden of proving, by clear and convincing evidence, that “its asserted grounds for seeking the termination of parental rights are valid.” *In re T.D.*, 949 A.2d 910, 914 (Pa. Super. 2008).

In this case, the Agency seeks to terminate the parental rights of Mother and Father pursuant to 23 Pa.C.S.A. §§ 2511(a)(1), (2) and (5), which are as follows:

(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.

Our case law has made clear that,

under [23 Pa.C.S.A. §] 2511, the court must engage in a bifurcated process prior to terminating parental rights. Initially, the 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 the statutory grounds for termination delineated in [23 Pa.C.S.A. §] 2511(a). Only if the court determines that the parent's conduct warrants termination of his or her parental rights does the court engage in the second part of the analysis pursuant to [23 Pa.C.S.A. §] 2511(b): determination of the needs and welfare of the child under the standard of best interests of the child. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child, with close attention paid to the effect on the child of permanently severing any such bond.

In re L.M., 923 A.2d 505, 511 (Pa. Super. 2007) (citations omitted).

23 Pa.C.S.A. § 2511(b) states that the court may not terminate the rights of a parent based "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.” Additionally, “[w]ith respect to any petition filed pursuant to [23 Pa.C.S.A. § 2511(a)(1)] . . . 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(b).

When a child has been removed from a parent’s care, that parent has an affirmative duty to sustain communication and association with the child in order to “maintain a place of importance in the child’s life.” *In re Shives*, 525 A.2d 801, 803 (Pa. Super. 1987) (quoting *In re Burns*, 379 A.2d 535, 540 (Pa. 1977)). Consequently, once a child is placed in foster care, the parent has an affirmative duty to work towards the child’s return. *In re William L.*, 383 A.2d 1228 (Pa. 1978). Because of this affirmative duty, “a parent who is incapable of performing parental duties is just as parentally unfit as one who refuses to perform the duties.” *Id.* at 1239.

The Agency has met its burden under 25 Pa.C.S.A. § 2511(a)(1), (2), and (5) regarding the Petition to terminate Father’s parental rights. The Agency has established that Father “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” as required by Section 2511(a)(1). Father testified that his participation in the initial visiting nurse parenting training in 2007 was “off and on.” Father did not want to

participate, and eventually refused to participate. Pursuant to this Court's Emergency Order of June 28, 2007, Father was not residing with Mother and X.F.O. From June 28, 2007 through February 6, 2008, Father had only two (2) visits with X.F.O. While Father made minimal progress in his ability to care for X.F.O. between February 6, 2008 and April 30, 2008, on July 28, 2008, Father continually refused to participate in parenting sessions. On August 11, 2008, Mother reported that Father had vacated the residence in which X.F.O. was residing. On August 27, 2008, X.F.O. was removed from Father's custody. On September 24, 2008, the Permanency Review Order noted that 1) Father had been inconsistent with his visits with X.F.O. after August 27, 2008; 2) he was confrontational with the Visiting Nurse representative; and 3) he continued to fail to complete domestic violence training.

The February 11, 2009 Permanency Review Order indicated Father 1) had not been visiting X.F.O.; 2) had not completed the domestic violence evaluation; and 3) was facing criminal charges in Lehigh County. That Order specifically noted that Father had made no progress in alleviating the circumstances that led to the dependency. In March of 2009, Father indicated that he would not comply with domestic violence treatment. Father has not expressed any interest in serving in a parental role for X.F.O, instead suggesting that Mother, Father's mother, or even Ms. Breckon, the visiting nurse representative, assume parenting responsibility for X.F.O. The

July 15, 2009 Permanency Review Order indicated that Father had 1) made no progress in alleviating the circumstances that led to the dependency; 2) no involvement with the services offered by the Agency; and 3) made minimal contact with X.F.O. Father has been incarcerated since October of 2009. Prior to his incarceration, Father participated in a portion of one (1) visit with X.F.O. This was the sole visit Father had with X.F.O. between August of 2009 and the time of trial.

The Agency has also met its burden as to Section 2511(a)(2) with regard to Father's parental rights. 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 wellbeing." *In re: E.A.P.*, 944 A.2d 79, 82 (Pa. Super. 2008). "Grounds for termination under subsection (a)(2) are not limited to affirmative misconduct; those grounds may include acts of incapacity to perform parental duties." *Id.*

It is clear that based upon the facts stated above, including Father's repeated and continued refusal to participate in domestic violence treatment, as well as his continued refusal to regularly visit and/or remain in contact with X.F.O., has caused X.F.O. 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 Father.

The Superior Court addressed one of the "acts of incapacity to perform parental duties" in the matter of *In re: E.A.P.* as follows:

Imprisonment is but one factor the trial court must consider in analyzing a parent's performance. While incarcerated, a parent is expected to utilize whatever resources are available to him while in prison in order to foster a continuing close relationship with his children. Parents are required to make diligent efforts towards the "reasonably prompt assumption of full parental responsibilities."

Id. (citations omitted). Father has been incarcerated since October of 2009 and will not be eligible for parole until July of 2011. While incarcerated, Father has taken no steps to remedy the circumstances that caused the initial dependency of X.F.O. Since his imprisonment, Father also has had no visits or any other form of contact with X.F.O. Father's actions and/or inactions, detailed above, including but not limited to his incarceration, have caused X.F.O. to be without essential parental care, control or subsistence necessary for his physical or mental well-being. The conditions and causes of the incapacity, neglect and refusal cannot or will not be remedied by Father. Therefore, the Agency has met its burden with respect to Section 2511(a)(2).

The Agency has also met its burden with respect to Section 2511 (a)(5). Specifically, the Agency has established that 1) X.F.O. has been removed from the care of Father by the Court with the Agency for a period

of at least six (6) months; 2) the conditions which led to the removal or placement of the child continue to exist; 3) Father will not remedy those conditions within a reasonable period of time; 4) the services or assistance reasonably available to Father are not likely to remedy the conditions which led to the removal or placement of X.F.O. within a reasonable period of time; and 5) termination of Father's parental rights would best serve the needs and welfare of X.F.O. As noted, X.F.O. has not been in the care of Father since August 27, 2008. Father has made no progress in remedying the circumstances that led to the initial dependency, has not taken advantage of any services provided for him, and Father will not remedy those circumstances in a reasonable period of time. Finally, as discussed below, termination of the parental rights of Father will serve the best needs and welfare of X.F.O.

Having determined that the Agency has met its burden under Section 2511, we must examine whether the termination of Father's parental rights is consistent with the needs and welfare of X.F.O. and must take into consideration the bonds currently existing between X.F.O. and Father. See, *In re: E.M.*, 620 A.2d 481 (Pa. 1993). We find that it is in the best interest of X.F.O. that Father's parental rights be terminated. Father has not attempted to establish contact or maintain any type of relationship with X.F.O. It is clear to the Court that there is little to no bond between X.F.O. and Father. Furthermore, we find that it is consistent with the needs and

welfare of X.F.O. that Father's parental rights be terminated. X.F.O. has become attached to his foster parents, is meeting all developmental milestones, and refers to his foster parents and "mommy" and "daddy." To remove him from that foster home would be detrimental to X.F.O.'s development. Therefore, terminating Father's parental rights is consistent with the needs and welfare of X.F.O.

The Agency has met its burden as to Section 2511(a)(1) regarding its Petition to terminate Mother's parental rights, proving to the Court by clear and convincing evidence that Mother, by conduct continuing for a period of at least six months immediately preceding the filing of the petition, has evidenced a settled purpose of relinquishing her parental claim to X.F.O and has refused and failed to perform parental duties. When X.F.O. was born, he tested positive for PCP. Mother, however, denied that she had used PCP while pregnant. The Court does not find that denial to be credible. Mother has failed to consistently attend her scheduled treatment sessions and has failed to consistently attend her drug screenings. When Mother has attended her drug screenings, she has returned numerous positive tests for alcohol and PCP. Mother has continued to deny that she has a drug issue and has consistently failed to take responsibility for her actions, always offering excuses for her positive drug tests in which she lays the blame fully on someone else. These excuses are not credible. On one of the occasions on which she tested positive for PCP, Mother's car struck a telephone pole and

then a building. She told the responding officer that the accident occurred because her feet came off the wheel. After the accident, Mother was found to be in possession of cocaine, which she then denied was her cocaine. Also on that occasion, Mother attempted to hang herself in her prison cell. Mother continues to deny that she has a drug addiction, and states that she is only involved in drug treatment to cooperate with the Agency.

Throughout the Agency's involvement with Mother, the providers of the parenting education component of her treatment have expressed concerns about her ability to care properly for X.F.O. Ms. Breckon testified that she was concerned that Mother was placing baby food in with X.F.O.'s formula, at ten weeks, which was contrary to accepted infant feeding practices. Additionally, on at least three occasions that Ms. Breckon witnessed, Mother was feeding X.F.O. by propping his bottle while he was lying in his crib out of Mother's site, thereby placing him at risk of choking. Ms. Breckon had previously instructed Mother not to feed X.F.O. in this manner due to the risk of choking. Ms. Breckon further indicated she was concerned that Mother had neglected to take X.F.O. to a doctor's appointment and failed to obtain treatment of X.F.O.'s eye infection. Although Mother has been relatively consistent with visiting X.F.O. when permitted, Mother has needed prompting to interact with X.F.O. At one visit, Mother fell asleep.

Mother has evidenced a settled purpose of relinquishing her parental claim to X.F.O. or has refused to perform parental duties. The statutory six (6) month requirement is not to be mechanically applied by the Court, *Com. v. Arnold*, 665 A.2d 836 (Pa. Super. 1995), and the court must consider the individual circumstances of each case. *In Interest of A.P.*, 692 A.2d 240, 245 (Pa. Super. 1997). Based upon the facts of this matter, Mother has failed to and/or refused to perform parental duties for a period of time greater than six months. Therefore, we find that the Agency has sustained its burden as to Section 2511(a)(1).

The Agency has also met its burden as to Section 2511(a)(2), which states that parental rights may be terminated in circumstances where,

[t]he 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.

X.F.O. has been without essential parental care, control or subsistence necessary for his physical or mental well-being due to the repeated and continued incapacity, abuse, neglect or refusal of Mother. Further, Mother cannot or will not remedy those conditions and/or causes.

Mother is addicted to PCP and has not adequately addressed, or even attempted to address, her drug addiction problem. She has routinely missed treatment sessions and has missed numerous drug screenings. Ms.

Hightower specifically recalled one treatment session at which Mother arrived under the influence. As noted above, Mother denies even having an addiction. Instead, Mother has informed numerous people that it is her belief that there is a conspiracy against her involving the Agency, the drug testing facilities, and even her counselors. Furthermore, Mother has not complied with the requirements set forth in the Permanency Plans and has been unable to establish any level of consistency which would be necessary for the proper parenting of X.F.O.

It is clear to the Court that Mother's repeated and continued incapacity, neglect or refusal has caused X.F.O. to be without essential parental care, control or subsistence necessary for his physical or mental well-being. It is also clear that the conditions and causes of the incapacity, abuse, and refusal cannot or will not be remedied by Mother. Therefore, the Agency has met its burden as to Section 2511(a)(2).

The Agency has also met its burden as to Section 2511(a)(5), which states that parental rights may be terminated when,

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.

It has been noted that when a child is placed in foster care, a parent has the affirmative duty to work toward the return of the child. *In re Diaz*, 669 A.2d 372 (Pa. Super. Ct. 1995). "This affirmative duty, at a 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 J.J.*, 515 A.2d 883, 890 (Pa. 1986).

When the claim is that a parent cannot or will not remedy the conditions that caused a child to be removed from the parent's custody, four prerequisites must be met under 23 Pa. C.S.A. §2511(a)(5). First, the child must have been removed from the care of the parent for at least six (6) months. Second, the conditions that led to the removal or placement of the child must continue to exist. Third, it must be shown that the parent cannot or will not remedy those conditions within a reasonable period of time. Fourth, it must be shown that the services or assistance reasonably available to Mother are not likely to remedy the conditions that led to the removal or placement of the child within a reasonable period of time.

X.F.O. has been removed from Mother's custody, and has been in the custody of the Agency for more than six (6) months. The conditions that led to the removal of X.F.O. continue to exist, i.e., Mother's lack of stability and very serious drug addiction. It is clear to the Court that Mother cannot or will not remedy those conditions within a reasonable amount of time.

Likewise, the Agency has proven by clear and convincing evidence that the services or assistance available to Mother will not remedy the conditions that led to the removal of X.F.O. Mother refuses to fully and actively participate in her treatment and her drug screenings. Mother has not made progress in her parenting education. Mother continues to be addicted to drugs, specifically PCP, denies having any addiction and does not actively and fully participate in that drug treatment.

Having determined that the Agency has met its burden under Section 2511, we must examine whether termination of Mother's parental rights is consistent with the needs and welfare of X.F.O and must take into consideration the bonds currently existing between X.F.O. and Mother. *In re: E.M.*, 620 A.2d 481 (Pa. 1993). We find that it is in the best interest of X.F.O. that Mother's parental rights be terminated. Mother has been unable to establish any level of consistency in her life that would be necessary for parenting a child. She has not taken advantage of the services provided for her to alleviate the conditions that led to the initial placement and dependency of X.F.O. Mother has not made progress in her parenting education classes, has failed to regularly attend her treatment sessions, and has failed to regularly attend her drug screenings. Mother is in denial of her drug addiction and has stated that she only attends drug treatment to cooperate with the Agency.

X.F.O. has become attached to his foster parents, is meeting all developmental milestones, and refers to his foster parents and “mommy” and “daddy.” X.F.O. also has a strong attachment to another child in the foster home. To remove him from that foster home would be detrimental to X.F.O.’s development. It would not be in X.F.O.’s best interest to remove him from the foster home. Furthermore, it is clear to the Court that there is little to no bond between X.F.O. and Mother. X.F.O. refers to Mother by her first name or, occasionally “Mommy Shantel.” X.F.O. has little to no difficulty separating from Mother at the end of visits and does not cry when she leaves. We find that it is consistent with the needs and welfare of X.F.O. that Mother’s parental rights be terminated and that the permanency goal be changed to “adoption.”

CONCLUSIONS OF LAW

1. Father and Mother have, through conduct continuing for a period of at least six months immediately preceding the filing of the Agency’s petition, failed to perform parental duties. 23 Pa.C.S.A. § 2511(a)(1).

2. The repeated and continued incapacity, neglect or refusal of Father and Mother has caused X.F.O. to be without essential parental care, control and subsistence necessary for her physical and mental well-being and the conditions and causes of this incapacity, neglect or refusal cannot or will not be remedied by Father and Mother. 23 Pa.C.S.A. § 2511(a)(2).

3. The conditions that led to the placement of X.F.O. continue to exist and Father and Mother cannot or will not remedy those conditions within a reasonable period of time. Furthermore, the services or assistance that have been made available to them are not likely to remedy the conditions in the foreseeable future. The termination of parental rights of Father and Mother would best serve the needs of the child. 23 Pa.C.S.A. § 2511(a)(5).

4. The natural parents are not entitled to the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. 50 U.S.C.A. § 501 et seq.

5. The Children, Youth and Families Division of the Northampton County Department of Human Services is qualified to receive custody of X.F.O. until such time as he is adopted.

6. It is in X.F.O.'s best interests that her placement goal be changed to adoption.

WHEREFORE, we enter the following:

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

**In Re: X.F.O.,
minor child of
S.N.K. and V.O., Jr.**

**: NO. 2009 – 0037
:
: INVOLUNTARY TERMINATION
: OF PARENTAL RIGHTS**

FINAL DECREE

AND NOW, this 15th day of July, 2010, upon consideration of the Involuntary Termination of Parental Rights Petitions filed on behalf of the Northampton County Division of Children, Youth and Families, a public agency of the Commonwealth of Pennsylvania, and following a hearing held on May 18, 2010; at which hearing Petitioner, through the assigned caseworkers and other authorized representatives, appeared in person and was examined under oath by the Court; and at which hearing Father, V.O., Jr., was present with counsel; and, at which hearing Mother, S.N.K., was present, acting *pro se*, and that the Court being satisfied as to the truth of the facts set forth in the Petition; that all of the requirements of 23 Pa.C.S.A. §2511-2521 have been satisfied; that the Petitioner, the Northampton County Division of Children, Youth and Families, has consented to assume sole custody of X.F.O., a minor, that the said V.O., Jr. and S.N.K., Father and Mother, have failed and refused to perform parental duties, and giving primary consideration to the needs and welfare of the child, that the prayer of the petition should be granted, therefore:

IT IS ORDERED AND DECREED pursuant to 23 Pa.C.S.A. §2511(1), (2), and (5), that all parental rights of V.O., Jr. and S.N.K., in and to X.F.O., a minor, be, and are, terminated; that any rights of V.O., Jr. and SN.K. to object to or receive notice of future adoption proceedings concerning X.F.O., a minor, be and are extinguished herewith; and that custody of X.F.O., a minor, be and is awarded unto Petitioner, Northampton County Division of Children, Youth, and Families, which shall stand in loco parentis to X.F.O. as provided by 23 Pa.C.S.A § 2521, pending final adoption. The new permanent placement goal is hereby determined to be adoption.

This Decree is a Final Decree.

BY THE COURT:

MICHAEL J. KOURY, JR., J.