

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

**In Re: D.M.B.,
A Minor child**

No. 2013-0065

**INVOLUNTARY TERMINATION
OF PARENTAL RIGHTS**

OPINION OF THE COURT

This matter is before the Court on the Petitions of the Northampton County Department of Human Services, Children, Youth and Families Division (the "Agency") for Involuntary Termination of Parental Rights of J.R. ("Mother") and D.B. ("Father") in regard to their natural child, D.M.B. ("D.M.B" or the "Child"), pursuant to sections 2511 and 2512 of the Adoption Act, 23 Pa.C.S.A. §§ 2511, 2512, and for a goal change from "return to parent" to "adoption." A non-jury trial was held before the undersigned on March 11, 2014. Briefs have been submitted by the Agency, Father, and the Court-appointed Guardian Ad Litem for the Child. For the reasons that follow, we hold that the Agency's Petitions should be granted.

FINDINGS OF FACT

I. Family Background and the Agency's Provision of Services

1. D.M.B. is a female child born on August 12, 2008. See Notes of Testimony at 7, *In re D.M.B., A Minor Child*, No. 2013-0065 (C.P. Northampton Co. Mar. 11, 2014) ("N.T."); Juvenile Court Records, N.T., Pet.

Ex. 1. Mother and Father are D.M.B.'s biological parents. See N.T. at 7.
D.M.B. has two older brothers and an older sister. See *id.* at 8.

2. The Agency began offering services to the family in mid-2010. See *id.* at 11-12, 30. Patricia Galietta, a caseworker in the Agency's Adolescent Unit, was assigned to the family from mid-2010 to January or February 2014. See *id.* at 6-7, 11-12, 30.

3. Father had problems with cocaine and a history of violence toward Mother. See *id.* at 11; Certified Copy of Father's Criminal Record, Pet. Ex. 2.

4. At the time the Agency became involved with the family, Mother, D.M.B., and D.M.B.'s two older brothers lived together in Bethlehem, Pennsylvania. See *id.* at 7-8. Father did not reside in the home but was frequently present. See *id.* at 8. D.M.B.'s older sister did not reside in the home. See *id.* at 7-8.

5. Galietta testified that Mother and Father required assistance with a number of issues, including domestic violence, anger management, substance abuse, and parenting. See *id.* at 12. Galietta said, "[Mother] was constantly fighting with [Father], the home was in decline, it just went from, you know, one extreme to the other. [Mother], her mental health at that time, was in question. . . . [T]here were a lot of reports of domestic violence taking place within the home." *Id.* at 38.

6. The Agency offered Mother and Father a number of services to address these issues, including individual therapy, family therapy, couples

counseling, and a case manager to work with Mother and Father on assessing home safety and the children's growth and development. *See id.* at 36-37.

7. Galietta testified that Father was "welcoming" to her when she visited the home. *Id.* at 37. However, Father did not cooperate with the offered services. *See id.* at 12, 37-38.

8. Galietta and Father discussed Father's issues with domestic violence, anger management, and substance abuse. *See id.* at 12-13. Although Father admitted that he had issues with violence toward Mother and acknowledged that domestic violence was wrong, he did not admit that he had issues with substance abuse. *See id.* at 12-14. Although Galietta asked Father to submit to drug screens, he did not do so. *See id.* at 11-13.

II. Father's Assault on D.M.B.'s Older Brother

9. On one occasion, D.M.B.'s older brother, J.M., who was fourteen years old, struck Mother, and Father punched J.M. in the nose. *See id.* at 10-11, 38; Pet. Ex. 2. D.M.B. was in the home at the time of this incident. *See N.T.* at 42.

10. The Agency investigated the incident between Father and J.M. and found that child abuse was indicated. *See id.* at 13. Father was subsequently convicted of simple assault in connection with this incident and was sentenced to twenty-four (24) months of probation. *See id.* at 9, 39; Pet. Ex. 2.

III. Father's Assault on Mother and Removal of D.M.B. from the Home

11. On July 25, 2012, Father assaulted Mother and bit off part of her ear. *See id.* at 8; Pet. Ex. 2. D.M.B. was in the home at the time of the assault. *See id.* at 43.

12. Mother admitted herself to a hospital for medical and mental health treatment. *See id.* at 10.

13. On July 25, 2012, as a result of Father's assault on Mother, upon petition of the Agency, the Court issued an Order granting the Agency emergency custody of D.M.B. *See id.* at 7-9, 15.

14. Galietta testified that at the time of Father's assault on Mother, Mother's home was in a "deplorable" condition. *Id.* at 14. Galietta testified:

As soon as we walked in and opened the door the smell of feces and urine was overwhelming. The home was extremely -- very, very dirty. The beds didn't have sheets on them, the clothes were strewn all over the floor. Actually there was a cat that looked like it was really dying because it wasn't being fed. There was cat feces, urine, a lot of roaches at that time. The rooms upstairs were just -- it looked like -- just ransacked. The children's rooms were filthy, the clothing in the dressers, specifically [D.M.B.'s] room, there was -- one [shirt] that was covered in old vomit. It was just disgusting.

Id. at 14-15.

IV. The Shelter Care Hearing

15. On July 27, 2012, the Court held a shelter care hearing. *See id.* at 15. At that time, Father had fled the area, and there was a warrant out for his arrest. *See id.* at 10-11, 15, 17. As a result, Father did not attend the hearing. *See id.* at 15.

V. The Adjudication of Dependency

16. On August 2, 2012, D.M.B. was adjudicated dependent and transferred to the custody of the Agency to be placed in foster care with the goal of returning her to her parents. *See id.* at 16-17; Pet. Ex. 1. Mother participated in the dependency hearing, but Father did not. *See* Pet. Ex. 1.

17. The Court ordered Mother to submit to urine screens, comply with mental health treatment, undergo a substance abuse evaluation, obtain a Protection from Abuse Order ("PFA") against Father, have regular visits with D.M.B., and maintain stable housing and legitimate income. *See* N.T. at 18; Pet. Ex. 1. The Court ordered Father to "petition the Court" to become a resource for D.M.B. *See* Pet. Ex. 1.

VI. Father's Arrest and Incarceration

18. On September 25, 2012, two months after the Agency secured emergency custody of D.M.B., Father was arrested for his assault on Mother and incarcerated in Northampton County Prison. *See* N.T. at 10-11, 18-19.

19. Since September 25, 2012, Father has remained incarcerated. *See id.* at 18.

VII. The First Three-Month Status Conference

20. On November 7, 2012, the Court held the first three-month status conference in D.M.B.'s case. *See id.* Mother appeared at the conference, but Father did not. *See* Pet. Ex. 1. As a result of Father's assault on

Mother, the Court found that Father was a danger and directed that Father have no contact with D.M.B. *See id.*; N.T. at 20, 44-45.

VIII. The First Permanency Review Hearing

21. On January 23, 2013, the Court held the first permanency review hearing for D.M.B. *See* N.T. at 18-19. At the time of the hearing, Father was incarcerated in Northampton County Prison, but his charges had not yet been resolved. *See id.* at 19, 21. Both Mother and Father attended the hearing. *See* Pet. Ex. 1.

22. The Court found that Mother's cooperation with the permanency plan had been minimal and that Father's cooperation had been nonexistent. *See* N.T. at 19-21.

23. The Court found that Mother had failed to submit to urine screens, failed to undergo a substance abuse evaluation, failed to comply with mental health treatment, and failed to take prescribed medication. *See id.* at 19. She had been hospitalized multiple times for attempting suicide. *See id.* Mother admitted that she had been using cocaine. *See id.* at 20-21. She had attended less than half of her visits with D.M.B., despite the fact that the Agency had provided her with gas cards and bus passes to assist with transportation. *See id.* at 19-20, 32.

24. Because the Court had directed that Father have no contact with D.M.B., Father had not visited D.M.B. since her July 25, 2012 removal from Mother's care. *See id.* at 20.

25. During the initial permanency review hearing, Father became angry at Mother and criticized her for failing to take the necessary measures to regain custody of the children. *See id.* at 21. He threatened Mother that if anything happened to D.M.B., Mother "would have to answer to him." *Id.*

26. The Court found that neither Mother nor Father had made any progress toward alleviating the circumstances that had necessitated the original placement and directed that D.M.B. remain in the custody of the Agency. *See id.*; Pet. Ex. 1.

IX. Father's Conviction and Sentencing

27. On February 7, 2013, Father was convicted of aggravated assault and terroristic threats in connection with his attack on Mother. *See id.* at 9-10; Pet. Ex. 2.

28. Father was sentenced to fourteen to twenty-eight months in a state correctional institution and ordered to have no contact with Mother. *See N.T.* at 9-10; Pet. Ex. 2.

X. The Second Three-Month Status Conference

29. On April 17, 2013, the Court held a second three-month status conference. *See N.T.* at 21. Mother attended the conference, but Father did not. *See id.* at 21-22; Pet. Ex. 1. No changes were made to the permanency plan. *See N.T.* at 22.

XI. The Second Permanency Review Hearing

30. On June 26, 2013, the Court held a second permanency review hearing. *See id.* At that time, Father had started serving his sentence for his assault on Mother and therefore had been transferred to state prison. *See id.* Mother attended the hearing, but Father did not. *See* Pet. Ex. 1.

31. The Court found that Mother had not submitted to any urine screens since October 2012; that she was actively using cocaine; and that she was still attending less than half of her visits with D.M.B. *See id.* at 22-23; Pet. Ex. 1.

32. The Court held that neither Mother nor Father had made any progress toward alleviating the circumstances that had necessitated the original placement and directed that D.M.B. remain in the custody of the Agency. *See id.* at 23; Pet. Ex. 1.

XII. The Third Three-Month Status Conference

33. On September 25, 2013, the Court held a third three-month status conference. *See* N.T. at 23; Pet. Ex. 1. Mother attended the conference, but Father did not. *See* N.T. at 23; Pet. Ex. 1. Father's Court-appointed attorney appeared on his behalf. *See* Pet. Ex. 1. No changes were made to the permanency plan. *See* Pet. Ex. 1. However, on September 20, 2013, the Agency had filed its Petitions for Involuntary Termination of Parental Rights against Mother and Father. *See* Petitions for Involuntary Termination

of Parental Rights, *In re D.M.B., A Minor Child*, No. 2013-0065 (C.P. Northampton Co. Sept. 20, 2013).

XIII. The Agency's Loss of Contact with Mother

34. In November 2013, Mother attended a pretrial conference in connection with the Agency's Petitions for Involuntary Termination of Parental Rights. See N.T. at 24.

35. Although Mother was aware that the Agency was seeking to terminate her parental rights, she did not ask any questions about D.M.B. See *id.* at 24-25, 36.

36. Mother had not complied with any services relating to mental health, substance abuse, or protective parenting and gave no indication that she intended to comply with services in the future. See *id.*

37. Mother declined to give the Agency the address where she was living. See *id.* at 24. She gave the address of a friend. See *id.*

38. Galietta testified that during the four years she worked with Mother, Mother was "never consistent" in keeping the Agency informed of her address and contact information. *Id.* at 31.

39. After the conference, the Agency lost contact with Mother and has since been unable to determine her whereabouts. See *id.* at 24, 30.

XIV. The Third Permanency Review Hearing

40. On December 11, 2013, the Court held a third permanency review hearing. See Pet. Ex. 1. Neither Mother nor Father attended the hearing.

See id. Mother's Court-appointed counsel attended on her behalf. *See* Pet. Ex. 1.

41. The Court found that Father remained incarcerated and had never served as a long-term caregiver for D.M.B. *See* Pet. Ex. 1. The Court found that Mother had failed to obtain stable income or housing; failed to submit to all of her urine screens except one; failed to attend weekly mental health appointments; and visited with D.M.B. only sporadically. *See id.* The Court found that neither Mother nor Father had made any progress toward alleviating the circumstances that had necessitated the original placement and directed that D.M.B. remain in the custody of the Agency. *See id.*; N.T. at 41-42.

XV. Mother's Recent Resumption of Contact with the Agency

42. Two weeks before trial, Mother left a telephone message on Galietta's voicemail asking for a return call. *See id.* at 30.

43. At that time, Galietta was no longer working on D.M.B.'s case. In February 2014, D.M.B.'s case had been assigned to a new caseworker, Alex Carrillo. *See id.* Galietta forwarded Mother's message to Carrillo. *See id.* at 30, 47.

44. A few days later, Carrillo called Mother. *See id.* at 48-49. Mother said she had learned that D.M.B. had been removed from her foster home and asked why. *See id.* at 48. Carrillo did not know how Mother had learned that D.M.B. had been removed from her foster home. *See id.*

Carrillo told Mother that the Agency was investigating issues of physical discipline in the home. *See id.* Mother told Carrillo that she was planned to retain an attorney to sue the Agency. *See id.* at 50.

45. Carrillo advised Mother of the date, time, and place of the upcoming trial on the Agency's Petition for Involuntary Termination of Parental Rights and advised Mother to attend the trial and raise any concerns she might have. *See id.* at 48-50. Mother told Carrillo that she planned to attend. *See id.* at 50.

46. Carrillo asked Mother to provide him with her mailing address. *See id.* at 49. She did not provide an address. *See id.* She told Carrillo she would have to speak with the friend with whom she was staying in order to get permission to provide the address. *See id.*

XVI. The Trial

47. At the time of trial, Mother's whereabouts were unknown. *See id.* at 24. The Agency served Mother with notice of the trial by publication by Order of the Court. *See id.* at 5. Mother did not attend the trial but was represented by Court-appointed counsel. *See id.*

48. Mother's Court-appointed counsel told the Court that she had had no contact with Mother, either in person, by telephone, or in writing. *See id.* at 5-6.

49. At the time of trial, Father was incarcerated in state prison. *See id.* at 9. Although Father was allowed to attend the trial and was represented by Court-appointed counsel, he did not testify. *See id.* at 5.

50. D.M.B.'s interests were represented by the Court-appointed Guardian Ad Litem. *See id.*

51. Both Mother's and Father's counsel requested a continuance to determine whether D.M.B.'s current foster home was an adoptive resource and to complete a home study on the home of Father's aunt in Puerto Rico to determine whether her home would be an appropriate placement for D.M.B. *See id.* at 3-5. The Agency and the Guardian Ad Litem opposed the continuance. *See id.* at 4-5. They argued that the Agency was not required to allege that a child is in a preadoptive home before seeking termination of parental rights. *See id.* The Court denied the continuance.

XVII. Mother's Visits with D.M.B.

52. As noted above, Mother has attended less than half of her visits with D.M.B. *See N.T.* at 19-20, 22-23, 32.

53. Mother has had no contact with D.M.B. since November 2013. *See id.* at 25.

54. Galietta testified that Mother's visits have been harmful to D.M.B. *See id.* at 45. She said, "[W]henever [D.M.B.] would see her mother, she would act out." *Id.* at 45.

XVIII. Father's Contacts with D.M.B.

55. Father has not seen D.M.B. since July 2012. *See id.* at 26.

56. Since Father's incarceration, he has repeatedly asked to visit D.M.B. *See id.* at 20, 44-45. However, because the Court found that Father was a danger as a result of his assault on Mother, the Court directed that Father was to have no contact with D.M.B. *See id.* at 20, 44-45. Thus, Father has not been permitted to visit D.M.B. *See id.* at 20, 44-45.

57. Since Father's incarceration, he has regularly written to Galietta and inquired about D.M.B.'s well-being. *See id.* at 25, 39-40. He has sent cards and letters to D.M.B. at least once per month. *See id.* at 40, 46. Galietta described Father's communications as "[v]ery appropriate." *Id.* at 40. Galietta testified that Father has done everything he can to remain in contact with D.M.B. *See id.* at 41.

58. Father has told Galietta that he loves D.M.B. and that when he is released from prison, he would like to be a father to her. *See id.*

59. Near the end of 2013, Father told Galietta that he would like for D.M.B. to live with his aunt in Puerto Rico. *See id.* at 25. A home study has been conducted, and the Agency is awaiting final approval of the aunt's home. *See id.* at 25-26. Galietta said that the evaluation of Father's aunt and her home likely will be positive. *See id.* at 35.

XIX. D.M.B.'s Relationships with Mother and Father

60. Since D.M.B. was removed from Mother's care, she has asked for Mother only once and Father only once. *See id.* at 42.

61. D.M.B. has shown little reaction to the correspondence she has received from Father. *See id.* at 45. Galietta testified, "I don't even think at this time that [D.M.B.] really remembers Father." *Id.*

62. Galietta testified that she does not know whether she recommends termination of parental rights. *See id.* at 28, 33. She said she believes that both Father and Mother love D.M.B. but that neither of them has taken the necessary steps to secure D.M.B.'s well-being. *See id.* at 28, 32.

XX. D.M.B.'s Growth and Development

63. As noted above, D.M.B. has been in the continuous custody of the Agency since July 25, 2012. *See id.* at 17.

64. At the time the Agency assumed custody of D.M.B., she was almost four years old. *See id.* She did not speak English, and she was developmentally delayed with respect to letters, numbers, and spelling. *See id.*

65. Since D.M.B. was removed from Mother's care, she has thrived. *See id.* at 26. She is growing and developing normally. *See id.* at 27. Galietta testified: "[D.M.B. is] extremely bright. She speaks English fluently. She's in kindergarten. She's doing very, very well. She's smart.

She's in dancing school, horseback riding. She's had a lot of opportunities where she even attended daycare. She's a very bright little girl." *Id.* at 26.

66. Galietta testified that D.M.B. enjoyed her time with the foster mother who had provided her with these positive opportunities and had shown affection toward her foster mother. *See id.* at 27. However, approximately one month before trial, D.M.B. was removed from that foster home, because her foster mother had spanked her on her behind. *See id.* at 33-34. D.M.B.'s brother, who is sixteen years old, was also living in that home and chose to stay in the home after D.M.B. was removed. *See id.* at 34-35.

XXI. Potential for Adoption

67. Galietta testified that D.M.B. is a "very" adoptable child. *Id.* at 27. She said that freeing D.M.B. for adoption would serve her needs and welfare. *See id.* at 29.

68. D.M.B.'s current foster parents have expressed an interest in adopting her. *See id.* at 26.

XXII. Mother's and Father's Potential for Reuniting with D.M.B.

69. Before either Mother or Father could begin attempting to reunite with D.M.B., each would have to secure stable employment and income, establish a suitable home, undergo drug and alcohol evaluation and treatment, and attend parenting classes. *See id.* at 27-28, 41-42. Mother would have to successfully address her mental health issues. *See id.* at 41-

42. Father would have to be released from prison, address his anger management issues, and pursue reunification therapy. *See id.* at 27-28.

70. To date, neither Mother nor Father has shown progress in addressing the circumstances that led to removal of D.M.B. from Mother's care. *See id.* at 28-29, 42.

DISCUSSION

I. Statutory Grounds for Involuntary Termination of Parental Rights

"The statute permitting the termination of parental rights outlines certain irreducible minimum requirements of care that parents must provide for their children, and a parent who cannot or will not meet the requirements within a reasonable time following intervention by the state, may properly be considered unfit and may properly have his or her rights terminated." *In re B.L.L.*, 787 A.2d 1007, 1014 (Pa Super. 2001).

It has been the national, State and local policy for many years pursuant to the Adoption Assistance and Child Welfare Act of 1980³ (the Act) to remove children from foster placement limbo where they know neither a committed parent nor can they look toward some semblance of a normal family life that is legally and emotionally equivalent to a natural family. The Act provides that States will be reimbursed for a percentage of foster care and adoption assistance payments when the State satisfies the Act's requirements. States such as Pennsylvania, which participate in the program, are required to make reasonable efforts to return the child to its home following foster placement, but failing to accomplish this due to the failure of the parent to benefit by such reasonable efforts, to move toward termination of parental rights and placement of the child through adoption. Foster home drift, one of the major failures of the child welfare system, was addressed by the federal government by a commitment to permanency planning, and mandated by the law of Pennsylvania in its participation in the Adoption and Safe Families Act of 1997

(Public Law 105-89, 111, stat. 2119). Succinctly, this means that when a child is placed in foster care, after reasonable efforts have been made to reestablish the biological relationship, the needs and welfare of the child require CYS and foster care institutions to work toward termination of parental rights, placing the child with adoptive parents. It is contemplated this process realistically should be completed within 18 months.

Id. at 1016.

"It is incumbent upon a parent when separated from his child to maintain communication and association with the child. This requires an affirmative demonstration of parental devotion, imposing upon the parent the duty to exert himself, to take and maintain a place of importance in the child's life." *In re G.P.-R*, 851 A.2d 967, 976 (Pa. Super. 2004). "Where the child is in foster care, this affirmative duty requires the parent to work towards the return of the child by cooperating with the Agency to obtain the rehabilitative services necessary for him to be capable of performing his parental duties and responsibilities." *Id.*

In order to terminate the rights of a parent in regard to a child, a petitioner must demonstrate one or more of the nine grounds set forth in section 2511(a) of the Adoption Act. See 23 Pa.C.S.A. § 2511(a)(1)-(a)(9). Here, the Agency seeks to terminate Mother's and Father's parental rights based on subsections 2511(a)(1), (a)(2), (a)(5), and (a)(8) of the Adoption Act. The relevant subsections are set forth below:

§ 2511. Grounds for involuntary termination

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

(1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

(2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

.....

(5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

.....

(8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

23 Pa.C.S.A. § 2511.

II. Burden of Proof

The grounds for termination must be established by clear and convincing evidence. See *Santosky v. Kramer*, 455 U.S. 745 (1982); *In re T.D.*, 949 A.2d 910, 914 (Pa. Super. 2008). 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." *In re A.L.D., Jr.*, 797 A.2d 326, 336 (Pa. Super. 2002).

III. Consideration of the Needs and Welfare of the Child

If the Court finds that a petitioner has carried its burden of proving that a parent's conduct warrants termination of parental rights based on one or more of the grounds specified in section 2511(a), the Court may then go on to consider whether termination would serve the needs and welfare of the child. See 23 Pa.C.S.A. § 2511(b).

(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.

Id.; accord *In re L.M.*, 923 A.2d 505, 511 (Pa. Super. 2007). The Court in

In re L.M. stated:

[U]nder [section] 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.

923 A.2d at 511 (citations omitted).

Under the authorities cited above, the Court must determine, for each parent, whether the Agency has carried its burden of proving, by clear and convincing evidence, that (1) the parent's conduct warrants termination of parental rights based on one or more of the grounds set forth in section 2511(a); and (2) termination of parental rights would serve the needs and welfare of D.M.B. We will analyze these issues for both Mother and Father.

IV. Section 2511(a)(1)

The ground set forth in section 2511(a)(1) is as follows:

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.

23 Pa.C.S.A. § 2511(a)(1).

Section 2511(a)(1) codifies historical case law that permitted termination of parental rights based on a theory of abandonment. *See In re Adoption of S.P.*, 47 A.3d 817, 827-28 (Pa. 2012). A court may terminate

parental rights under Section 2511(a)(1) where the parent demonstrates a settled purpose to relinquish parental claim to a child or fails to perform parental duties for at least the six months prior to the filing of the termination petition. See *In re Z.P.*, 994 A.2d 1108, 1117 (Pa. Super. 2010). "Parental duty requires that the parent act affirmatively with good faith interest and effort, and not yield to every problem, in order to maintain the parent-child relationship to the best of his or her ability, even in difficult circumstances." *In re B., N.M.*, 856 A.2d 847, 855 (Pa. Super. 2004). "A parent must utilize all available resources to preserve the parental relationship, and must exercise reasonable firmness in resisting obstacles placed in the path of maintaining the parent-child relationship." *Id.* "Parental rights are not preserved by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with his or her physical and emotional needs." *Id.* "Although it is the six months immediately preceding the filing of the petition that is most critical to the analysis, the trial court must consider the whole history of a given case and not mechanically apply the six-month statutory provision." *Id.*

Here, the six-month period preceding the filing of the Agency's petitions began on March 20, 2013. However, throughout the period since D.M.B.'s July 25, 2012 placement, Mother has demonstrated a lack of commitment to the steps necessary to permit her to regain custody of

D.M.B. Although Mother attended some Court proceedings, she did not comply with services relating to mental health, substance abuse, or protective parenting. She actively used cocaine. She attended less than half of her visits with D.M.B. The Court consistently found that she had made no progress toward alleviating the circumstances that had necessitated the original placement. In November 2013, Mother attended a pretrial conference on the Agency's petitions for involuntary termination of parental rights but did not ask any questions about D.M.B. and declined to give her address to the Agency. Thereafter, she stopped communicating with the Agency and stopped visiting D.M.B. Although she contacted the Agency approximately two weeks before trial, she did not indicate any intention to comply with services, and she once again refused to provide the Agency with her address. Although Carrillo gave Mother the date, time, and location for the trial, Mother did not attend. Viewed as a whole, Mother's actions indicate both a settled purpose to relinquish her parental claims and a failure to perform parental duties. Thus, the Court finds that the Agency has carried its burden under section 2511(a)(1) with respect to Mother.

Father was incarcerated throughout the six-month period prior to the filing of the Agency's petitions. Parents who are incarcerated and therefore face obstacles to communicating with their children will not be deemed to have evidenced a settled purpose of relinquishing their parental rights if they have utilized the resources available to them in prison to maintain a close

relationship with the child. See *In re Adoption of S.P.*, 47 A.3d 817, 830 (Pa. 2012).

In the 1970s, this Court considered the issue of termination of parental rights of incarcerated persons in [*In re Adoption of McCray*, 331 A.2d 652 (Pa. 1975)] and other cases involving abandonment, currently codified at 23 Pa.C.S. § 2511(a)(1). . . . In *McCray*, we stated: . . . "[W]e must inquire whether the parent has utilized those resources at his or her command while in prison in continuing a close relationship with the child. Where the parent does not exercise reasonable firmness in declining to yield to obstacles, his other rights may be forfeited." *Id.* at 655 (footnotes and internal quotation marks omitted). Notably, we did not decree that incarceration could never be a factor in a court's determination that grounds for termination had been met in a particular case. Instead, the emphasis of this passage was to impose on the incarcerated parent, pursuant to an abandonment analysis, a duty to utilize available resources to continue a relationship with his or her child.

Id.

Unlike Mother, Father continued to communicate with D.M.B. throughout the six-month period prior to the filing of the Agency's petitions. Galietta testified that Father regularly wrote to her to inquire about D.M.B. and that he sent cards and letters to D.M.B. approximately once per month. Although Father could not visit D.M.B. due to the Court's Order that he have no contact with her, he continued to request that he be allowed to visit her. Galietta testified that Father had done everything he could do, given the constraints of his incarceration, to maintain a close relationship with D.M.B. Late in 2013, Father asked the Agency to consider his aunt in Puerto Rico as a possible placement resource. Although this suggestion was untimely and the Court found that it lacked sufficient support to justify a delay in the trial,

the Court found that the suggestion was made in good faith. Unlike Mother, Father attended the trial. Thus, the Court finds that Father has not evidenced a settled purpose of relinquishing his parental claim to D.M.B. and has not refused or failed to perform parental duties. Accordingly, the Court holds that the Agency has not carried its burden of proof under section 2511(a)(1) with respect to Father.

V. Section 2511(a)(2)

The ground set forth in section 2511(a)(2) is as follows:

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.

23 Pa.C.S.A. § 2511(a)(2).

"[Under] section 2511(a)(2), . . . 'the petitioner for involuntary termination must prove (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 Interest of Lilley*, 719 A.2d 327, 330 (Pa. Super. 1998). "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." *In re E.A.P.*,

944 A.2d 79, 82 (Pa. Super. 2008). "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 1108, 1117 (Pa. Super. 2010).

Here, we find that Mother's drug abuse, mental health issues, suicide attempts, chaotic and unsanitary living conditions, and repeated involvement in domestic violence in the presence D.M.B. constitute "incapacity, abuse, neglect or refusal of the parent" that have left D.M.B. without "essential parental care, control or subsistence necessary for her physical or mental well-being." In addition, we find that Mother's conduct since D.M.B.'s placement demonstrates that "the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent." As discussed in detail above, throughout the period since D.M.B.'s July 25, 2012 placement, Mother has demonstrated a lack of commitment to the steps necessary to permit her to regain custody of D.M.B. Before Mother could begin attempting to reunite with D.M.B., she would have to secure stable income and employment, establish a suitable home, undergo drug and alcohol evaluation and treatment, and attend parenting classes. *See id.* at 27-28, 41-42. She would also have to successfully address her mental health issues and suicidal impulses. In light of Mother's past failures to address any of these issues, the Court finds that she is unlikely to remedy the "incapacity, abuse, neglect or refusal" that have left D.M.B. without

"essential parental care, control or subsistence necessary for her physical or mental well-being." Thus, the Court finds that the Agency has carried its burden under section 2511(a)(2) with respect to Mother.

Father has been either a fugitive or incarcerated since D.M.B. was removed from Mother's care. A parent's absence from a child due to incarceration may be sufficient to prove both (1) the parent's incapacity to provide parental care and (2) the parent's inability to remedy the incapacity to provide parental care. *See In re Adoption of S.P.*, 47 A.3d 817, 830 (Pa. 2012) (termination proper where father had been incarcerated since prior to child's birth, father never provided child with essential parental care, and, even upon parole, father would reside in a halfway house and would need to obtain housing, employment, and transportation in addition to parenting skills). In *S.P.*, the Pennsylvania Supreme Court stated:

[I]ncarceration, while not a litmus test for termination, can be determinative of the question of whether a parent is incapable of providing "essential parental care, control or subsistence" and the length of the remaining confinement can be considered as highly relevant to whether "the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent," sufficient to provide grounds for termination pursuant to 23 Pa.C.S. § 2511(a)(2). . . . The trial court properly found that Father has been incarcerated since prior to Child's birth and never provided Child with essential parental care. Accordingly, the court did not abuse its discretion in concluding that Father's "repeated and continued incapacity

. . . caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being." 23 Pa.C.S. § 2511(a)(2).

Id. The Court quoted with approval a concurring opinion in *In re R.I.S.*, 36 A.3d 567 (Pa. 2011).

"[T]he fact of incarceration during an ongoing dependency action will not disqualify a parent from resuming parental responsibility so long as the parent will be released quickly enough to permit the court to provide the child with timely permanency upon reunification. If, however, the length of parent's incarceration will preclude the court from unifying the (former) prisoner and the child on a timely basis in order to provide the child with the permanent home to which he or she is entitled, then the length of sentence, standing alone, should and does meet the legal criteria for involuntary termination of the incarcerated parent's parental rights under 23 Pa.C.S. § 2511(a)."

47 A.3d at 829-30 (quoting *In re R.I.S.*, 36 A.3d at 576 (Baer, J., concurring)). In *S.P.*, the Pennsylvania Supreme Court also quoted with approval a dissenting opinion in *R.I.S.* See *In re Adoption of S.P.*, 47 A.3d at 830.

[The dissent] noted with approval the Superior Court's case law providing that courts cannot employ an "isolated evaluation" of the issue of incarcerated parents in termination cases but instead "must take into consideration all of the relevant factors, including the nature of the relationship before incarceration, the terms of incarceration, and their effect on a parent's ability to perform parental duties, along with a parent's efforts to remain involved with his child while incarcerated." *Id.* at 586 (citing *In re Z.P.*, 994 A.2d 1108 [(Pa. Super. 2010)]). The dissent further opined that "[l]ong-term incarceration, where a prisoner's ability to parent his child in the foreseeable future is 'speculative at

best,' will justify termination of parental rights under section 2511(a)(2) even if the parent expresses a willingness to parent the child."

Id. (quoting *In re R.I.S.*, 36 A.3d at 586 (Melvin, J., dissenting)); accord *In re E.A.P.*, 944 A.2d 79, 85 (Pa. Super. 2008) (termination was proper under section 2511(a)(2) where mother's repeated incarcerations and failure to be present for her child had caused child to be without essential care and subsistence for most of her life and could not be remedied despite mother's compliance with prison programs, including sex offender treatment and parenting classes). The Court in *E.A.P.* stated:

It is certainly possible that . . . Mother will have completed her sex offender program and may be able to be a parent to [the child]; however, on this record we cannot view that possibility as a "reasonable prospect." On this record, we simply cannot take the risk that [the child], who is specifically adoptable at present, should linger in foster care in the hope that Mother can or will change her conduct of the past ten years.

944 A.2d at 85.

Where, as here, the parent exhibited an incapacity to parent for a substantial period prior to incarceration, it is unrealistic to conclude that the parent will acquire the necessary parenting skills within a reasonable time after release from prison. See *In re Z.P.*, 994 A.2d 1108, 1125 (Pa. Super. 2010) ("Father's repeated drug use and criminal activity within the past nine years occurred despite the existence of his other children. These decisions show a pattern of incapacity to parent, particularly while not incarcerated."). The question is not whether the parent will ever overcome the circumstances

that led to the original placement but whether he or she will do so within sufficient time to provide meaningful permanency for the child. *See id.*

[The child], therefore, would have to remain in foster care until some speculative point in the future before Father could care for him. . . . Pennsylvania law does not compel this result just because an incarcerated parent participates in prison programs, shows interest in his child, participates in legal proceedings, and works toward early release from prison. The complete circumstances of the case must be considered. [The child's] need for consistency and stability cannot be ignored, merely because Father is "doing what [he] is supposed to do in prison." *See In re E.A.P.*, [944 A.2d 79, 84 (Pa. Super. 2008)]. To the contrary, the [Adoption and Safe Families Act]-related policies now demand reasonable efforts within a reasonable time to remedy parental incapacity. [The child] has already been in foster care for the first two years of his life, and his need for permanency should not be suspended, where there is little rational prospect of timely reunification. . . . Father's overall parenting history revealed no genuine capacity to undertake his parental responsibilities, and the Agency's evidence was sufficient to terminate his parental rights under subsection (a)(2).

Id. at 1125-26 (citations omitted); *accord In re C.L.G.*, 956 A.2d 999, 1008 (Pa. Super. 2008).

[I]f we were to permit Mother further opportunity to cultivate an environment where she can care for [the child], we would be subjecting a child, who has been waiting for more than two years for permanency, to a state of proverbial limbo in anticipation of a scenario that is speculative at best. While it appears that Mother has managed to remain drug-free in the confines of incarceration, whether she can maintain that status among the external pressures of the outside world remains to be proven. One can only speculate as to what the future conditions of Mother's release from incarceration will entail and how soon she would be permitted to have supervised visits, let alone overnight visitation or full custodial care of a child she has never parented. In fact, if Mother's life-long history of involvement with drug use and drug dealing bears upon her probability of success, she will face significant challenges in achieving a sober and productive lifestyle. More importantly, . . . the likelihood of severe

detriment to [the child], if she were subjected to such a precarious re-introduction to Mother, could be devastating to her developmental well-being.

C.L.G., 956 A.2d at 1008.

The Superior Court recently held that termination of an incarcerated person's parental rights is inappropriate where the child protection agency has made no efforts to assist the parent in arranging visits with the child to strengthen the parent-child bond. *See In re D.C.D.*, No. 1484 MDA 2013, ___ A.3d ___, 2014 WL 1621789, at *7 (Pa. Super. Apr. 23, 2014) (reversing Orphans' Court's termination of parental rights on ground that child protection agency had failed to make reasonable efforts to assist incarcerated father in establishing a relationship with child), *appeal granted*, No. 314 MAL 2014, 2014 WL 2503618 (Pa. June 2, 2014). Here, however, the Agency could not have assisted Father in arranging visits with D.M.B., because the Court had found that Father was a danger and directed that he have no contact with D.M.B. In *D.C.D.*, the Superior Court expressly noted that such a restriction would relieve the Agency of any obligation to assist the parent in arranging visits with the child. *See id.* ("[U]nlike in the case before us, the juvenile court in *S.P.* prohibited [the agency] from making certain efforts to establish and maintain contact between the father and the child, including arranging visitation between S.P. and her father, as that court concluded it was not in the child's best interest.").

Here, we find that Father's absence from D.M.B. due to his incarceration demonstrates both (1) his incapacity to provide parental care and (2) his inability to remedy the incapacity to provide parental care. Before Father was incarcerated, he had an extended history of drug use and violence toward Mother and her son, J.M. D.M.B. was present in the home during the incidents of violence. Father showed no insight regarding his issues and did not cooperate with services. Father allowed D.M.B. to remain in deplorable living conditions with a mentally ill, drug-addicted, suicidal mother and did nothing to protect her. After Father's July 25, 2012 assault on Mother, he fled from authorities. After he was apprehended, the Court found him to be a danger and directed that he have no contact with D.M.B. Even after he was incarcerated, at the second permanency review hearing, he threatened Mother in open Court and made no acknowledgement of his own role in D.M.B.'s placement. There is no indication in the record that Father has made any attempt to avail himself of any services that may be available in prison to address his issues with substance abuse, anger management, and domestic violence. Although Father attended the trial, he chose not to testify.

When Father is released from prison, before he could regain custody of D.M.B., he would have to secure stable employment and income, appropriate housing, parenting education, and reunification therapy. In addition, he would have to undergo drug and alcohol evaluation and

treatment and address his issues with anger management and domestic violence. Given Father's history, his lack of self-insight, and his past failure to address any of his numerous issues, the Court finds that Father is incapable of providing parental care and is unlikely to remedy his incapacity upon his release from prison. Accordingly, the Court finds that the Agency has carried its burden under section 2511(a)(2) with respect to Father.

VI. Section 2511(a)(5)

The ground set forth in section 2511(a)(5) is as follows:

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.

23 Pa.C.S.A. § 2511(a)(5).

Where, as here, the conduct that led to removal of the child from the parent's care also led to the parent's incarceration, the conditions that led to the child's removal "continue to exist" while the parent is incarcerated. See *In re C.L.G.*, 956 A.2d 999, 1007 (Pa. Super. 2008) ("[W]e find that Mother's 'criminal issues' are a direct consequence to her 'drug issues' and, thus, they are synonymous for the purpose of our analysis into whether the conditions which led to [the child's] removal continue to exist.").

Here, D.M.B. was removed from the parents' care on July 25, 2012. The Agency's petitions for involuntary termination of parental rights were filed on September 20, 2013. Thus, more than six months have elapsed since the removal or placement. The Court consistently found that the conditions that led to the removal or placement continued to exist and that neither Mother nor Father had made any progress in alleviating the circumstances that had led to the removal or placement. Based on the testimony at the trial, we find that that the conditions that led to the removal or placement continue to exist at this time. For the reasons discussed above, we find that neither Mother nor Father will remedy those conditions within a reasonable period of time and that the services or assistance reasonably available to them are not likely to remedy those conditions within a reasonable period of time. Accordingly, we hold that the Agency has carried its burden of proof under section 2511(a)(5) with respect to both Mother and Father.

VII. Section 2511(a)(8)

The ground set forth in section 2511(a)(8) is as follows:

The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

23 Pa.C.S.A. § 2511(a)(8).

"Section 2511(a)(8) sets a 12-month time frame for a parent to remedy the conditions that led to the children's removal by the court." *In re A.R.*, 837 A.2d 560, 564 (Pa. Super. 2003). "Once the 12-month period has been established, the court must next determine whether the conditions that led to the child's removal continue to exist, despite the reasonable good faith efforts of the Agency supplied over a realistic time period." *Id.*

"Termination under Section 2511(a)(8) does not require the court to evaluate a parent's current willingness or ability to remedy the conditions that initially caused placement or the availability or efficacy of Agency services." *Id.*

We recognize that the application of Section (a)(8) may seem harsh when the parent has begun to make progress toward resolving the problems that had led to removal of her children. By allowing for termination when the conditions that led to removal of the child continue to exist after a year, the statute implicitly recognizes that a child's life cannot be held in abeyance while the parent is unable to perform the actions necessary to assume parenting responsibilities. This Court cannot and will not subordinate indefinitely a child's need for permanence and stability to a parent's claims of progress and hope for the future. Indeed, we work under statutory and case law that contemplates only a short period of time, to wit eighteen (18) months, in which to *complete* the process of either reunification or adoption for a child who has been placed in foster care.

In re C.L.G., 956 A.2d 999, 1005 (Pa. Super. 2008) (emphasis in original).

Here, D.M.B. was removed from Mother's care on July 25, 2012. The Agency's petitions for involuntary termination of parental rights were filed on September 20, 2013. Thus, more than twelve months have elapsed since the removal or placement. The Court consistently found that the conditions

that led to the removal or placement continued to exist and that neither Mother nor Father had made any progress in alleviating the circumstances that had led to the removal or placement. Based on the testimony at the trial, we find that that the conditions that led to the removal or placement continue to exist. Accordingly, we hold that the Agency has carried its burden of proof under section 2511(a)(8) with respect to both Mother and Father.

VIII. Needs and Welfare of the Child

Where, as here, the Court finds that the Agency has established that the parent's conduct warrants termination of parental rights based on one or more of the grounds set forth in section 2511(a), the Court must then consider whether termination of parental rights would serve the needs and welfare of the child. See 23 Pa.C.S.A. § 2511(b). "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." *Id.* "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).

Since D.M.B. was removed from Mother's care, she has thrived. At the time the Agency assumed custody of D.M.B., she was almost four years old. She did not speak English, and she was developmentally delayed with

respect to letters, numbers, and spelling. She is now growing and developing normally and performing well in foster care. Galietta testified: "[D.M.B. is] extremely bright. She speaks English fluently. She's in kindergarten. She's doing very, very well. She's smart. She's in dancing school, horseback riding. She's had a lot of opportunities where she even attended daycare. She's a very bright little girl." *Id.* at 26.

Where a child is considered "adoptable," termination of parental rights serves the child's needs and welfare, because it frees the child to be placed in a stable home. *See In re E.A.P.*, 944 A.2d 79, 85 & n.5 (Pa. Super. 2008) ("[The child's] caseworker testified that [she] is an 'adoptable' child, that despite her serious diagnoses, she's 'a very bright, adorable, outgoing, friendly, lovable little girl.' . . . [A]s [the child] ages, her likelihood of adoption will obviously decline. These are the realities of the adoption process and were properly considered by the trial court . . .").

The absence of a close bond between a parent and child weighs in favor of termination of parental rights, because (1) requiring the child to remain with the parent in the absence of a close bond could be detrimental to the child; and (2) termination of parental rights would permit the child to seek the benefits of a stable home without disrupting a significant parental attachment. *See E.A.P.*, 944 A.2d at 85 (child told caseworker she wanted to be adopted into a permanent home but made no mention of her natural mother; "[The child's therapist] stated that 'beginning any sort of contact

[with Mother] at this point would be detrimental to [the child]. She has no recollection of [Mother] as 'Mom.'").

Here, Galietta testified that D.M.B. is an adoptable child and that her current foster parents have expressed an interest in adopting her. Thus, at this time, termination of Mother's and Father's parental rights is likely to result in adoption by a stable family, which would serve D.M.B.'s needs and welfare. As in *E.A.P.*, the Court must be cognizant that as D.M.B. ages, her likelihood of adoption will decline.

Galietta testified that D.M.B. has no close bond with either Mother or Father. She said that D.M.B. has asked for each of them only once since her July 25, 2012 removal from Mother's care. Galietta said she believes that D.M.B. does not even remember Father. Thus, termination of Mother's and Father's parental rights would not disrupt any significant parental attachment with D.M.B. Because of D.M.B.'s weak attachment to Mother and Father, requiring her to remain with either of them would be potentially detrimental to her well-being. Thus, the Court finds that the Agency has carried its burden of proving that termination of Father's and Mother's parental rights would serve D.M.B.'s needs and welfare.

CONCLUSION

Based on the foregoing, we hold that (1) the Agency has established grounds for terminating the parental rights of both Mother and Father under 23 Pa.C.S.A. § 2511(a); and (2) termination of Mother's and Father's

parental rights would serve the needs and welfare of D.M.B., as required by 23 Pa.C.S.A. § 2511(b). Accordingly, we hold that the Agency's petitions for involuntary termination of parental rights and for a goal change from "return to parent" to "adoption" should be granted.

WHEREFORE, we enter the following:

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

**In Re: D.M.B.,
A Minor child**

No. 2013-0065

**INVOLUNTARY TERMINATION
OF PARENTAL RIGHTS**

FINAL DECREE

AND NOW, this 19th day of June, 2014, upon consideration of the Petition for Involuntary Termination of Parental Rights filed on behalf of the Northampton County Children, Youth and Families Division, a public agency of the Commonwealth of Pennsylvania, in whose care D.M.B., a minor child, has been for a period in excess of six (6) months; following a hearing held on this date; and at which hearing Petitioner, through the assigned caseworker or other authorized representative, appeared in person and was examined under oath by the Court; and

at which hearing father, D.B.

- was present with counsel;
- was present without counsel;
- was not present;
- was not present, but counsel appeared on their behalf;

Of which hearing, father, D.B., was served with at least ten (10) days written notice in the form prescribed by Section 2513(b) of the Adoption Act, 23 Pa.C.S.A. §2513(b) by

- personal service
- certified mail, return-receipt requested/restricted delivery;

publication pursuant to court order dated

waived his rights to Notice of the proceeding, by his presence at the hearing.

that the Court being satisfied as to the truth of the facts set forth in the Petition; that the petitioner, the Northampton County Children, Youth and Families Division, has consented to assume sole custody of D.M.B., a minor child, that the said D.B., father of D.M.B., has 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

- | | |
|--|--|
| <input type="checkbox"/> (a)(1) | <input type="checkbox"/> (a)(6) |
| <input checked="" type="checkbox"/> (a)(2) | <input type="checkbox"/> (a)(7) |
| <input type="checkbox"/> (a)(3) | <input checked="" type="checkbox"/> (a)(8) |
| <input type="checkbox"/> (a)(4) | <input type="checkbox"/> (a)(9) |
| <input checked="" type="checkbox"/> (a)(5) | <input checked="" type="checkbox"/> (b) |

that all parental rights of D.B., father to D.M.B., a minor child, are terminated; that any rights of D.B., father to object to or receive notice of future adoption proceedings concerning D.M.B., a minor child, are extinguished herewith; and that custody of D.M.B., a minor child, is awarded unto Petitioner, Northampton County Children, Youth and Families Division,

which shall stand *in loco parentis* as provided by 23 Pa.C.S.A. §2521,
pending final adoption.

This is a Final Decree.

BY THE COURT:

MICHAEL J. KOURY, JR., J.

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

**In Re: D.M.B.,
A Minor child**

No. 2013-0065

**INVOLUNTARY TERMINATION
OF PARENTAL RIGHTS**

FINAL DECREE

AND NOW, this 19th day of June, 2014, upon consideration of the Petition for Involuntary Termination of Parental Rights filed on behalf of the Northampton County Children, Youth and Families Division, a public agency of the Commonwealth of Pennsylvania, in whose care D.M.B., a minor child, has been for a period in excess of six (6) months; following a hearing held on this date; and at which hearing Petitioner, through the assigned caseworker or other authorized representative, appeared in person and was examined under oath by the Court; and

at which hearing mother, J.L.

- was present with counsel;
- was present without counsel;
- was not present;
- was not present, but counsel appeared on their behalf;

Of which hearing, mother, J.L., was served with at least ten (10) days written notice in the form prescribed by Section 2513(b) of the Adoption Act, 23 Pa.C.S.A. §2513(b) by

- personal service
- certified mail, return-receipt requested/restricted delivery;

publication pursuant to court order dated February 21, 2014
 waived his rights to Notice of the proceeding, by his presence at the hearing.

that the Court being satisfied as to the truth of the facts set forth in the Petition; that the petitioner, the Northampton County Children, Youth and Families Division, has consented to assume sole custody of D.M.B., a minor child, that the said J.L., mother of D.M.B., has 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

<input checked="" type="checkbox"/> (a)(1)	<input type="checkbox"/> (a)(6)
<input checked="" type="checkbox"/> (a)(2)	<input type="checkbox"/> (a)(7)
<input type="checkbox"/> (a)(3)	<input checked="" type="checkbox"/> (a)(8)
<input type="checkbox"/> (a)(4)	<input type="checkbox"/> (a)(9)
<input checked="" type="checkbox"/> (a)(5)	<input checked="" type="checkbox"/> (b)

that all parental rights of J.L., mother to D.M.B., a minor child, are terminated; that any rights of J.L., mother to object to or receive notice of future adoption proceedings concerning D.M.B., a minor child, are extinguished herewith; and that custody of D.M.B., a minor child, is awarded

unto Petitioner, Northampton County Children, Youth and Families Division,
which shall stand *in loco parentis* as provided by 23 Pa.C.S.A. §2521,
pending final adoption.

This is a Final Decree.

BY THE COURT:

MICHAEL J. KOURY, JR., J.