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NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: B.M.S.	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: R.A.S., MOTHER	:	
	:	No. 1560 EDA 2019

Appeal from the Order Entered May 16, 2019
In the Court of Common Pleas of Montgomery County Orphans' Court at No(s): 2018-A0201

BEFORE: BENDER, P.J.E., MURRAY, J., and PELLEGRINI*, J.

MEMORANDUM BY PELLEGRINI, J.: **FILED SEPTEMBER 16, 2019**

R.A.S. (Mother) appeals from an order of the Court of Common Pleas of Montgomery County, Orphans' Court Division, (Orphans' Court) involuntarily terminating her parental rights to her minor daughter, B.M.S. (Child) (born in August 2017), pursuant to the Adoption Act, 23 Pa.C.S. § 2511(a)(1),(2), (5) and (b).[1] We affirm.

The Orphans' Court, in a thorough and well-reasoned opinion, set forth the relevant factual background of this case. ***See*** Orphans' Court Opinion,

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[1] By separate order entered May 16, 2019, the Orphans' Court denied the petition filed by the Office of Children and Youth (OCY) to involuntarily terminate the parental rights of C.J. (Father) to Child. Father is not a party to this appeal.

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* Retired Senior Judge assigned to the Superior Court.

5/16/19, at 1-14. We adopt the Orphans' Court's recitation for purposes of this appeal.

Mother and Father were never married. After Child was born, Child lived with Mother and Maternal Grandfather. On September 28, 2017, OCY received a referral from Abington Hospital that Mother had taken Child to the hospital multiple times but the hospital was not able to find anything medically wrong with Child. The referral further alleged that the hospital was concerned about Mother's mental health stability and inadequate housing.

On October 12, 2017, OCY received a second referral from Abington Hospital that Mother took Child to the hospital four times in six weeks. OCY took Child into emergency custody on October 13, 2017, when Child was approximately two months old. Following OCY's decision to take emergency custody of Child, on October 13, 2017, Mother was hospitalized at Abington Hospital for her mental health. A shelter care hearing was held on October 16, 2017. The Orphans' Court ordered Child to remain in the custody of OCY.

Although Mother initially lived at Maternal Grandfather's home in Roslyn, Pennsylvania, she moved from there to a shelter for victims of domestic violence. Mother's family service plan (FSP) objectives were: (1) to stabilize her mental health; (2) to participate in any recommended mental health treatment; (3) to take any prescribed medications; (4) to obtain and maintain housing; (5) to acquire and maintain employment; (6) to avoid

police contacts; and (7) to keep OCY up to date on her address and contact information. Mother received services from Justice Works and Time Limited Family Reunification. Mother eventually obtained an apartment in Norristown, Pennsylvania with assistance from Your Way Home, a Montgomery County housing assistance agency.

After Child was placed in foster care, Mother was offered supervised visits with her. Mother frequently expressed her concerns that Child appeared dirty, bruised or scratched and was at risk for illness or injury, which impaired her progress and ability to achieve reunification as her allegations were unfounded. On May 3, 2018, Mother was granted an unsupervised visit with Child. During the visit, Mother took Child to the hospital, claiming Child had an allergic reaction. After the hospital determined that Child did not have an allergic reaction, Mother's visits were then reduced to one hour supervised visits at OCY's office. During her supervised visit with Child on July 12, 2018, Mother accused Child's foster parents of child abuse. Because Mother became verbally aggressive and refused to leave, Mother had to be escorted from the building. Mother's visits with Child were suspended and have not resumed for the remainder of the case.

On July 20, 2018, an interstate compact agreement was approved for Maternal Grandmother, who resides in Florida, to become the kinship foster care placement for Child. Child moved to Florida to live with Maternal Grandmother in August 2018. In October 2018, Mother informed OCY that

she intended to move to Florida. When Maternal Grandfather died in October 2018, Mother returned to Maternal Grandfather's house in Roslyn, Pennsylvania. Mother currently lives in Florida.

On October 12, 2018, OCY filed separate petitions to involuntarily terminate Mother and Father's parental rights to Child.

On May 16, 2019, the Orphans' Court entered its final order and opinion terminating Mother's parental rights to Child pursuant to 23 Pa.C.S. § 2511(a)(2), (5), and (b). On June 5, 2019, Mother timely filed a *pro se* notice of appeal from the court's termination order.[2]

I.

Initially, we must address a number of procedural deficiencies that would have the effect of us not conducting a review of Mother's appeal.

On June 12, 2019, this Court issued an order stating that Mother failed to file a concise statement of errors complained of on appeal contemporaneously with her notice of appeal as required by Pa.R.A.P. 1925(a)(2)(i) (explaining that in children's fast track appeals, "[t]he concise statement of errors complained of on appeal shall be filed and served with

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[2] Because Mother's filing of an appeal while still being represented by an attorney is not permitted, (***See Commonwealth v. Jette***, 23 A.3d 1032 (Pa. 2011) (emphasizing that hybrid representation is forbidden on appeal), we issued a rule to show cause. The Orphans' Court responded to our order by granting her attorney previously filed leave to withdraw and stating Mother shall proceed *pro se*.

the notice of appeal required by Rule 905"). ***See also*** Pa.R.A.P. 905(a)(2) ("If the appeal is a children's fast track appeal, the concise statement of errors complained of on appeal as described in Rule 1925(a)(2) shall be filed with the notice of appeal and served in accordance with Rule 1925(b)(1).").

In response to this Court's June 12, 2019 order, Mother filed a concise statement on June 14, 2019. ***J.M.R. v. J.M.***, 1 A.3d 902, 906 (Pa. Super. 2010) (declining to find waiver on the basis that father failed to comply with Rule 1925(a)(2)(i) because his untimely-filed statement did not prejudice the parties and "did not impede the trial court's ability to issue a thorough opinion"). Because no party has expressed prejudice resulting from Mother's late filing of her concise statement, we will not dismiss her appeal.

We must also determine whether Mother preserved any claims for our review. "A concise statement of errors complained of on appeal must be specific enough to identify and address each issue the appellant wishes to raise on appeal." ***Mazurek v. Russell***, 96 A.3d 372, 377 (Pa. Super. 2014). "An overly vague or broad statement of errors complained of on appeal may result in waiver." ***Majorsky v. Douglas***, 58 A.3d 1250, 1258 (Pa. Super. 2012), *appeal denied*, 70 A.3d 811 (Pa. 2013). Upon review of Mother's twenty-six page document titled, "1925(b) Statement," Mother does not properly specify the error or errors to be addressed on appeal. The Orphans' Court, however, did issue a Rule 1925(a) opinion addressing its decision to terminate her parental rights pursuant to Section 2511(a)(2) and (b) and, as a result, we can conduct a meaningful, appellate review. Therefore, we

decline to find waiver for the lack of specificity of Mother's concise statement.

Finally, appellate briefs "must materially conform to the requirements of the Pennsylvania Rules of Appellate Procedure," and this court may quash or dismiss an appeal if the defect in the brief is substantial. ***Commonwealth v. Adams***, 882 A.2d 496, 497-98 (Pa. Super. 2005); Pa.R.A.P. 2101. Although appellate courts are "willing to construe liberally materials filed by a *pro se* litigant, *pro se* status generally confers no special benefit upon an appellant. Accordingly, a *pro se* litigant must comply with the procedural rules set forth in the Pennsylvania Rules of the Court." ***Commonwealth v. Lyons***, 833 A.2d 245, 251-252 (Pa. Super. 2003) (citation omitted). Here, Mother's *pro se* appellate brief does not include a statement of questions involved, fails to provide any coherent legal arguments, and does not even remotely comply with the Rules of Appellate Procedure. ***See*** Pa.R.A.P. 2116. Despite the considerable defects in Mother's *pro se* brief, again, we decline to find waiver and proceed to analyze the sufficiency of the evidence to support the Orphans' Court's order terminating Mother's parental rights to Child under Section 2511(a)(2) and (b).

Now to the merits.

II.

A.

"The party seeking termination must prove by clear and convincing evidence that the parent's conduct satisfies the statutory grounds for termination delineated in [the subsections of 23 Pa.C.S. § 2511(a)]." ***In re Adoption of J.N.M.,*** 177 A.3d 937, 942 (Pa. Super. 2018) (quoting ***In re L.M.***, 923 A.2d 505, 511 (Pa. Super. 2007)). If the orphans' court finds that one of those subsections has been satisfied, then under Section 2511(b), it must make a "determination of the needs and welfare of the child under the standard of best interests of the child." The orphans' court may then enter a final decree of involuntary termination if it is in the child's best interests as outlined in Section 2511(b). ***Id.***[3]

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[3] We review such a decree for an abuse of discretion. ***In re G.M.S.***, 193 A.3d 395, 399 (Pa. Super. 2018) (citation omitted). In order to affirm the termination of parental rights, this Court need only agree that any one subsection under Section 2511(a) has been made out. ***In re Interest of D.F.,*** 165 A.3d 960, 966 (Pa. Super. 2017). Moreover, "[w]e give great deference to trial courts that often have first-hand observations of the parties spanning multiple hearings." ***Id.*** "We must employ a broad, comprehensive review of the record in order to determine whether the trial court's decision is supported by competent evidence." ***In re S.H.***, 879 A.2d 802, 805 (Pa. Super. 2005). "The trial court is free to believe all, part, or none of the evidence presented and is likewise free to make all credibility determinations and resolve conflicts in the evidence." ***In re A.S.***, 11 A.3d 473 (Pa. Super. 2010). "If competent evidence supports the trial court's findings, we will affirm even if the record could also support the opposite result." ***Id.***

In this case, the Orphans' Court found that OCY made out by clear and convincing evidence that Mother's parental rights should be terminated under each of the following subsections of Section 2511:

> (a)(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.
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> ....
>
> (a)(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.

23 Pa.C.S. § 2511(a)(2), (5).

The Orphans' Court also found that termination of Mother's parental rights was in the best interests of Child under Section 2511(b).

B.

As best we can determine, Mother contends that the Orphans' Court abused its discretion in terminating her parental rights. We disagree. The evidence is clear that termination was warranted under Section 2511(a)(2) because the evidence showed that Mother's continued incapacity to parent the Child, as well as the inability to improve her parental skills due to her

mental health issues, caused the Child to be without essential parental care, control or subsistence necessary for her physical or mental well-being.

At the termination hearing, Dr. Stephen Miksic opined that Mother had an adjustment disorder with anxiety and depression and a possible bi-polar disorder with psychotic feature represented as overly developed suspicion or paranoia. This caused her to be overly sensitive or hyper-vigilant to the Child's medical or health conditions, which led to unnecessary trips to the hospital, claims Child was injured when she was not and constant unnecessary changing of the diaper. The evidence also showed that despite completing a parenting program, Mother was unable to focus on the needs of the Child even for the short duration of a supervised visit. Moreover, the evidence also showed that Mother exhibited repeated and continued incapacity to parent the Child with her consistently erratic behaviors, paranoia and yelling and general behavior at visits with service providers.

Not only is the evidence clear under Section 2511(a)(2), for similar reasons, there was clear and convincing evidence that termination was warranted under Section 2511(a)(5). Mother did not demonstrate an ability to overcome her mental health issues to the extent that she could safely care for Child. ***See In re P.A.B.***, 570 A.2d 522, 528 (Pa. Super. 1990) ("A determination that the Parents' incapacity results in an inability to care for the children and that the condition cannot improve over time is insufficient to warrant termination under 2511(a)(5)."). Mother failed to pursue necessary mental health treatment either by attending treatment sessions

erratically and other times expressing a belief that she did not need any treatment at all.

Having found that the termination of Mother's parental rights was justified under Section 2511(a), the next step of our inquiry is whether the termination is in the best interests of Child as required by Section 2511(b). This provision focuses on whether termination of parental rights would best serve the developmental, physical and emotional needs and welfare of the Child. Here, the Orphans' Court, based on the clear and convincing evidence found in the record, reflects that the best interests of Child were served by terminating Mother's parental rights because she is unable to meet the Child's tangible needs due to her inability to ascertain the Child's actual health needs from those she perceives affects the Child's medical care. At the time the Child was referred to OCY when she was two months old, doctors were already concerned that all of the unnecessary medical tests and hospital visits were enough to be considered medical abuse. This behavior did not improve over time as Mother continued to perceive illnesses and injuries that no one else observed, and has acted on those perceptions by taking the Child to the emergency room or calling police. Beyond unnecessary testing, Mother's perceptions about the Child's health may cause the Child to not receive necessary treatment or make current health issues worse.

Accordingly, we affirm the order of the Court of Common Pleas of Montgomery County that terminated Mother's parental rights pursuant to 23 Pa.C.S. § 2511(a)(2) and (b).

Order affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 9/16/19

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PA

ORPHANS' COURT DIVISION

ORPHANS' CT. NO: 2018-A0201

IN RE: ADOPTION OF B.M.S.

OPINION SUR PETITIONS FOR TERMINATION OF PARENTAL RIGHTS OF BIRTH MOTHER AND BIRTH FATHER

Murphy, A.J. **May 16th, 2019**

The Office of Children Youth of Montgomery County (hereinafter "OCY") has filed petitions to terminate the parental rights of birth mother, R.A.S., and birth father, C.J., to their child, B.M.S. The child was born August 14, 2017, and is now 1 year and 9 months old.

The petitions for involuntary termination of parental rights were filed October 12, 2018 and, with respect to each birth parent, allege as grounds for termination of each one's parental rights §§ 2511(a)(1), 2511(a)(2) and 2511(a)(5) of the Adoption Act, 20 Pa.C.S. §2511(a)(1), (2) and (5). The Office of Children and Youth bears the burden of proving its case by clear and convincing evidence.

This Court appointed counsel to represent the child. These petitions were scheduled for a hearing on Monday, November 26, 2018. Birth mother had previously privately hired Michael Eisenberg as her counsel to represent her in Juvenile Court proceedings; a few days before the initial hearing was scheduled to take place, Mr. Eisenberg advised the Court that he would not be representing birth mother. On

November 26, 2018, birth mother appeared and asked the Court to appoint counsel to represent her. This Court appointed Bruce Pancio, Esquire as counsel for birth mother and scheduled a two-day hearing for January 17, 2019 and January 24, 2019. Shortly after his appointment, differences between counsel and birth mother arose and, at the request of birth mother, this Court vacated the appointment of Mr. Pancio and appointed Colleen Consolo, Esquire, to represent birth mother. The first two days of this hearing were held on January 17, 2019 and January 24, 2019, and Ms. Consolo represented birth mother throughout. An additional one-day hearing was scheduled for Friday, March 8, 2019.

In February, differences arose between birth mother and Ms. Consolo, who filed a petition for leave to withdraw her appearance as counsel. A rule returnable date of February 25, 2019 was issued to birth mother to show cause why the petition to withdraw should not be granted. This Court granted the petition to withdraw on February 28, 2019. This Court specified that if birth mother engaged new counsel to represent her, counsel must enter his or her appearance on or before March 7, 2019, and that no further continuances would be granted.

Birth mother, using her own funds, retained new counsel, Russell Manning, Esquire, who entered his appearance on Thursday, March 7, 2019. Mr. Manning requested a continuance of the March 8, 2019 hearing date. Despite the Court's warning that no further continuances would be granted, the Court granted Mr. Manning's request for a continuance, but scheduled a conference with all counsel for March 8, 2019. An additional two days of hearing to complete the record was scheduled, with the agreement of all counsel, for April 3, 2019 and, if needed, April 4, 2019. This Court issued an

order with these scheduled hearing dates and ordered that no further continuances would be granted. Copies of that order were mailed by Court staff to all mailing addresses provided to the Court by birth mother and to the email address that she provided to the Court, in addition to being sent to her counsel, Mr. Manning.

On March 15, 2019, Mr. Manning filed a petition for leave to withdraw as counsel for birth mother. The hearing on this petition was scheduled for 9:30 a.m. on April 3, 2019, immediately prior to the resumption of the hearing on the petitions for termination of parental rights. Thus, before the final day of hearing commenced on April 3, 2019, birth mother had been represented by at least four different attorneys, as well as one prior counsel who represented her in the Juvenile Division. The disruption in her representation has caused a delay of several months in bringing the hearing on these petitions for termination of parental rights to a conclusion.

Birth mother has repeatedly changed her email address and her mailing addresses without notice to the parties and the Court and without entering her appearance on the docket. However, this Court and counsel provided notice of the scheduling order to birth mother at the email and mailing addresses she provided.

Mr. Manning appeared on April 3, 2019 in support of his motion for leave to withdraw as counsel. Birth mother requested leave to appear by telephone or video, rather than attending in person. No other party objected to birth mother appearing by video and she was permitted to participate by video for the entire hearing on April 3, 2019. Birth mother did not oppose Mr. Manning's request to withdraw as counsel, and acknowledged that she would be representing herself for the final day of the hearing.

The Court granted Mr. Manning's petition for leave to withdraw as her counsel, and birth mother represented herself for the remainder of the hearing.

STANDARDS FOR TERMINATION OF PARENTAL RIGHTS

The petitioner must establish grounds for termination of parental rights by the standard of clear and convincing evidence, which was established as a threshold to termination of parental rights by the United States Supreme Court in the case of *Santosky v. Kramer*, 455 U.S. 745 (1982). This standard is defined as evidence that is so clear, direct, weighty and convincing as to enable the court to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. It is not necessary that the evidence be uncontradicted . . . provided it "carries conviction to the mind" or carries "a clear conviction of its truth." *LaRocca Trust*, 411 Pa. 633, 192 A.2d 409 (1963).

The termination of parental rights is controlled by 23 Pa.C.S. §2511. In this case, OCY sought to terminate the parents' parental rights pursuant to §§ 2511 (1), (2), and (5), which provide as follows:

> **§ 2511. Grounds for involuntary termination**
>
> **(a) General rule.**—The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:
>
> > (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

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

....

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

23 Pa.C.S. §§ 2511(a)(1), (2), (5).

The petitioner bears the burden of proving each element of any of these sections by the standard of clear and convincing evidence with respect to each of the birth parents.

With respect to the alleged ground under § (a)(5), the child has been removed from the care of the parents from October 13, 2017 until the present, a period of 18 months. At the time that the petitions were filed, the child had been removed from the care of the parents for more than 11 months. The six-month time period having been satisfied, the principal questions relevant to the ground for termination under § (a)(5) are

(1) whether the conditions that led to removal of the child from the home continue to exist as of the time the petition was filed (October 12, 2018); (2) whether the parent can or will remedy the conditions within a reasonable time; (3) whether termination of parental rights will best serve the needs and welfare of the child; and (4). whether the services reasonably available to assist the parent are likely to remedy the conditions that led to removal within a reasonable period of time.

The Pennsylvania Superior Court has identified certain irreducible minimum requirements to which all children are entitled from their parents, including adequate housing, clothing, food, love and supervision. *In re Diaz*, 669 A.2d 372 (Pa. Super. 1995). "The necessary implication is that a parent who cannot or will not meet the irreducible minimum requirements . . . within a reasonable time following state intervention may properly . . . have parental rights terminated." *In re J.W., A.W., V.W. and J.W.*, 396 Pa. Super. 379, 390-91, 578 A.2d 952, 958 (1990). Thus the grounds for terminating parental rights may consist of a lack of capacity and not just affirmative misconduct. *In re E.M.*, 533 Pa. 115, 620 A.2d 481 (1993).

FACTUAL BACKGROUND

The child, B.M.S., was born on August 14, 2017, and is now 1 year and 9 months old. The child was removed from the care of her mother at age two months on October 13, 2017, after repeated unnecessary visits to the emergency room.

On July 20, 2018, an interstate compact agreement was approved for maternal grandmother, who resides in Florida, to become the kinship foster care placement for the child. The child moved to Florida to the home of her maternal grandmother in August

2018. Anna Taylor, a Florida caseworker who has visited the child in the maternal grandmother's home, testified that the child is happy, playful and thriving in the home, which is clean and appropriate. N.T. 1/17/2019, pp. 13-15.

Although this Court is delivering this opinion with respect to the petition for termination of the parental rights of the birth father and with respect to the petition for termination of parental rights of the birth mother, it is necessary separately to consider the facts and circumstances of each of the birth parents.

FACTS CONCERNING BIRTH MOTHER

The child lived with her birth mother and maternal grandfather in the first few months after her birth. OCY received a report from physicians at Abington Hospital that birth mother brought the infant child to the hospital emergency room on several occasions in September and October for minor complaints not requiring emergency medical care. On September 28, 2017, the emergency room personnel made an initial referral to OCY, and OCY investigated. Birth mother had presented at the emergency room as unwilling to return to her home and expressed concerns about potential abuse by her father with whom she lived in Roslyn. After OCY had initially opened its case for services to the child, on October 12, 2017, OCY received a second referral from the hospital, to which birth mother had again brought the child for an unnecessary emergency room visit. The hospital admitted the child to the pediatric unit citing a need to observe the child for failure to thrive or dehydration, although OCY understood the physicians to have concluded that the child was not ill and admitted her to the hospital as a protective measure, as the medical team did not conclude that the child was ill, but concluded that

child should not return home in the birth mother's care. It appears that the physicians had concerns regarding birth mother's mental stability. On October 13, 2017, OCY took emergency custody of the child.

Following OCY's decision to take emergency custody of the child, on October 13, 2017, birth mother was hospitalized at Abington Hospital for her mental health. N.T. 1/17/2019, p. 33. Although birth mother initially lived in her father's home in Roslyn, Pennsylvania, she moved from there to Laurel House, a shelter for victims of domestic violence. From there she obtained an apartment in Norristown, Pennsylvania, with assistance from Your Way Home, a Montgomery County housing assistance agency. OCY caseworker Katelyn Nashwick testified that she believed that birth mother lived in the Norristown apartment until September or October of 2018.

After the placement of the child in foster care, birth mother was offered supervised visits with the child beginning in October of 2017. Although OCY spent considerable time and effort providing services to the birth mother to assist her to learn parenting skills, to have valuable time with her child during visits, and to make progress toward reunification, birth mother's behavior at visits and obsessive concern that the child was at risk for illness or injury impaired birth mother's ability to make progress and achieve reunification. Birth mother frequently expressed concern at visits that the child appeared dirty, bruised or scratched, for which she attempted to blame the foster parents. The OCY caseworkers and Justice Works caseworkers did not observe any bruises, scratches or dirtiness on the child at any time.

Elise Nielsen, a social worker with Justice Works Services, supervised visits between birth mother and the child from December of 2017 until July of 2018. Ms.

Nielsen testified that at the beginning of her time supervising visits, in December 2017, the visits were scheduled to occur at the OCY's offices. She also worked with birth mother on completing a parenting curriculum known as "Nurturing Parenting," which birth mother completed in March of 2018. Ms. Nielsen testified that birth mother would spend time at the visits on "a lot of outside factors" including focusing on "the open case with Children and Youth, or she felt . . . [the child] wasn't getting proper care from foster parents." N.T. 1/17/2019, p. 74. In addition, birth mother would state that she felt that the child was "dirty" and that "she had bruises all over her body," although the caseworker testified that she observed no evidence of the child being dirty or bruised. *Id.* at pp. 74-75. Ms. Nielsen testified that if anything changed, including the time or location of the visits, that would throw the birth mother "off and visits would not go very well." *Id.* Ms. Nielsen described the visits when birth mother was "thrown off" as follows: "I feel like during the visits she was just kind of focusing on everything but [the child]. She would be holding [the child] in her arms, but she would be requesting for Katelyn, the caseworker, to come down to speak with her, so just not engaging really with [the child]." *Id.* Asked whether birth mother learned anything from the nurturing parenting curriculum, Ms. Nielsen replied, "I don't think she necessarily learned anything from the curriculum. Again, she did complete the curriculum, but it didn't appear that she had changed anything in her parenting style." *Id.* at p. 76. Ms. Nielsen testified that for most of the supervised visits from December 2017 until May of 2018, birth mother would hold the child but would not allow her to engage in play. Ms. Nielsen suggested to the birth mother that she allow the child to play on the floor, but the birth mother

refused "due to germs." Eventually, birth mother brought a blanket and some toys with her to some of the supervised visits, and allowed the child to play on the blanket.

Ms. Nielsen also testified that diaper changing was a recurring issue of conflict with the birth mother, as birth mother at supervised visits would "constantly change[ ] her, at least once an hour," and that birth mother would use "multiple wipes . . . . There would be at least ten to fifteen wipes used per diaper change." *Id.* at pp. 78-80. Birth mother continued to change the child excessively frequently and use numerous wipes despite the fact that the child had sensitive skin and was prone to diaper rash and the birth mother had been advised not to use so many wipes. The caseworker attempted to talk to mother about not changing the child's diaper so frequently, but this coaching was not well received.

In March of 2018, it appeared that birth mother had made some progress and the location of supervised visits was changed from the OCY offices to birth mother's apartment in Norristown. In late April of 2018, one partially unsupervised visit was scheduled at birth mother's apartment. During this unsupervised visit, the mother became concerned that the child had what she thought was an allergic reaction to banana baby food, and called 911 and took the child to the emergency room for evaluation. Birth mother advised the caseworker, who met birth mother at the emergency room. The child was discharged from the emergency room without concern. Thus, on the one and only occasion when birth mother had a visit with the child that was not supervised, birth mother repeated her behavior of dramatically overreacting and concluding that her child was experiencing a medical emergency. As a result of this unnecessary emergency room visit, OCY changed the visits back to supervised visits at OCY.

Following this incident, on May 10 and 17, 2018, the caseworker attempted to implement a visit coaching program, during two visits, to assist birth mother and improve the quality of the visits, but testified that birth mother did not respond well to coaching before and during the visits and rejected the input of the caseworker. On May 17, 2018, during a supervised visit at OCY's offices, the caseworker described the birth mother as "focusing on observing or examining [the child's] body for bruises." N.T. 1/17/2019 at p. 84. Birth mother called several OCY workers into the room and asked them to confirm that the child was bruised, but none of the workers observed bruises. Later in the same visit, the child bumped her head while birth mother was holding her and began to cry. The caseworker attempted to coach the birth mother on soothing the child, but she testified that the birth mother "began to get flustered and very overwhelmed, and she started to yell and curse." At that time, a security guard entered the room and the visit was ended early. Although the caseworker acknowledged that some of the visits between birth mother and the child went well, she also testified that there would be some "bad visits", during which the birth mother was not able to communicate well with the caseworker and unable to respond well to feedback. N.T. 1/17/2019 at p. 86. After the May 17, 2018 visit, the visits were reduced in time to one hour each week, supervised at OCY.

At a supervised visit on July 12, 2018, birth mother changed her daughter's diaper within the first five minutes of the visit and indicated to the caseworker that she wished to call the police. Five minutes later, birth mother changed the diaper again, and asked the caseworker to examine the child. Ms. Nielsen testified that she did not observe any redness or swelling in the child's genital area. Birth mother stated that she believed that

the foster parents had "tampered with" the child and insisted that she wanted to call the police and report an incident of child abuse to ChildLine. Ms. Nielsen tried to calm the birth mother and reassure her that the child was not injured, but the police were called and the visit ended early. Ms. Nielsen testified that the birth mother became verbally aggressive with her at the end of that visit, refused to leave the visit, and had to be escorted from the building. N.T. 1/17/2019 at pp. 90-92.

After July 12, 2018, visits for birth mother were suspended by order of the Juvenile Court. To this date, visits between birth mother and her child have not resumed. At the hearing before this Court on January 24, 2019, birth mother made a motion that her visits be resumed. By that time, birth mother was not cooperating with OCY and had revoked her previous authorization for mental health providers to speak with OCY caseworkers regarding whether birth mother was receiving treatment. The undersigned, sitting as a Juvenile Division Judge for purposes of permanency review hearings, declined to order that visits resume until birth mother provides evidence to OCY and the Court that she is receiving mental health treatment and following through with recommendations, and until she provides an authorization for OCY caseworkers to speak with her mental health providers to confirm that she is receiving treatment.

Stephen Miksic, Ph.D. was qualified as an expert in psychology, parenting capacity and parent-child attachment or bonding. He testified that he met with and evaluated birth mother twice. He observed that "she was very obsessed with cleanliness and the concern that [the child] should have a clean diaper" and that he observed her to change the child's diaper at least three times within a one-hour visit. N.T. 1/17/2019 at pp. 38-37. He described birth mother as having difficulty maintaining healthy

relationships and as "overly sensitive or hyper-vigilant about [the child's] medical condition or health status, which led to unnecessary trips to the hospital and possibly other unusual restrictions. . . ." N.T. 1/17/2019 at p. 40. At the second observation by Dr. Miksic of birth mother with her daughter on May 31, 2018, he observed that "birth mother was engaging in compulsive behavior that focused on problems with [the child] rather than positive issues or simply interacting with her in a healthy way. . . ." He testified that this behavior was evidenced from the first moment of the visit, in that birth mother complained that the room where they met was "unhygienic", questioned whether the restraints in a child seat were used properly by the person who transported the child, and began to change the child's diaper immediately, even though she was told it had recently been changed. He also observed birth mother to ask the child if someone had hurt her. N.T. 1/17/2019 at p. 44. Birth mother held the child on her lap throughout the visit, and although she expressed love and affection for the child, she restrained the child and did not allow her to play on the floor in a developmentally appropriate way. *Id.* Dr. Miksic described the birth mother's behavior at the observations as follows: "her preoccupation with finding physical difficulties, unhygienic conditions, and other issues dominated her interactions with [the child] and cause her to restrict her movements. . . ." N.T. 1/17/2019, at pp. 46-47. He concluded that the relationship between this mother and child was not a healthy relationship as it caused restrictions on developmentally appropriate activities and a risk of unnecessary medical interventions. *Id.* at p. 50.

According to the testimony of OCY caseworker Katelyn Nashwick, in September of 2018, birth mother revoked her consent for the OCY caseworker to obtain information from mental health providers from whom birth mother was receiving services and also

revoked her consent for Your Way Home to provide confirmation of the residence where birth mother was living. In October of 2018, birth mother informed Ms. Nashwick that she intended to move to St. Augustine, Florida. However, after her father died in October 2018, birth mother returned to the Roslyn, Pennsylvania address at which her father had lived. At the initial hearing date on November 26, 2018, she advised the Court that her address was the Roslyn address. On December 18, 2018, caseworker Nashwick and her supervisor attempted to visit birth mother at the home in Roslyn, but she refused to allow them into the home to meet with her. Subsequently, birth mother has asserted that she is now living in Florida and has provided several Florida addresses and an email address. As noted above, the Court granted her request to participate in the hearing on April 3, 2019 by video from Florida. Birth mother has argued that this Court lacks jurisdiction over the child because birth mother is now a Florida resident, and because the child was placed with maternal grandmother in Florida through the Interstate Compact. This is nonsense as the Montgomery County Office of Children and Youth has had legal custody of the child since October of 2017.

Throughout the hearing on April 3, 2019, the questions posed by birth mother to various parties were rambling, unclear, and often irrelevant or tangential to the issues presented to be decided. Her own testimony was disorganized and was focused at times on irrelevant or extraneous issues. She attempted to present certain documents in evidence by emailing them to court staff during the late night hours of April 2-3, but never effectively established the relevance of the documents, nor did she effectively identify or authenticate documents or request their admission in evidence. See N.T. 4/3/2019, *passim.*

ANALYSIS AND APPLICATION OF LAW TO BIRTH MOTHER

With respect to the birth mother, the most relevant ground for termination of parental rights is an incapacity to parent, pursuant to § 2511(a)(2). The Pennsylvania Supreme Court has discussed the ground for termination of parental rights based upon parental incapacity as follows:

> A decision to terminate parental rights, never to be made lightly or without a sense of compassion for the parent, can seldom be more difficult than when termination is based upon parental incapacity. The legislature . . . concluded that a parent who is incapable of performing parental duties is just as parentally unfit as one who refuses to perform the duties.

In re Adoption of J.J., 511 Pa. 590 (1986); quoting *In re: William L.*, 477 Pa. 322, 383 A.2d 1228 (1978).

Despite a parent's wishes and desire to preserve a parental bond or role, in cases where the parent is incapable of providing basic necessities and where the parent will continued to suffer such incapacity, the focus of the Court must be not on the parent's wishes and desires, but on the question of whether the parent is capable of meeting the children's needs for security, safety, permanency and well-being, including placing the children's needs ahead of his or her own when necessary.

With respect to the birth mother, this Court finds that OCY has met its burden of proof to demonstrate grounds for termination of parental rights by clear and convincing evidence under § 2511(a)(2), in that birth mother lacks the capacity to parent this child and provide her safety and security.

This Court also concludes that the petitioner, OCY, has established a basis for terminating the parental rights of the birth mother pursuant to § 2511(a)(5), in that the conditions that led to the placement of the child in foster care, namely birth mother's unresolved mental health issues, continue to exist and will not be remedied within a reasonable time.

FACTS CONCERNING BIRTH FATHER

When OCY first opened its case in September of 2017 to investigate the care of this child, the child was in the home of birth mother. Birth father, C.J., was identified by birth mother but was already incarcerated before the child's birth, until October 17, 2018. Birth father has a criminal record that includes convictions for driving under the influence and other drug and weapons charges and violations of the terms of his probation. During the period of his incarceration he had no visits with the child and requested none, nor did he have any visits with his two older children. However, according to the testimony of a caseworker, on three or four occasions birth mother called birth father on the telephone during a visit she had with the child, and he had telephone contact with the child while he was incarcerated. N.T. 1/17/2019, at pp. 98-101. During his incarceration, he completed an anger management program and a drug and alcohol program. However, during this period he provided no support to the child, financial or otherwise, and sent no cards, gifts or letters to the child. He maintained telephone and written communication with his caseworker at OCY, advising her about his projected release date and discussing his goals following his release from prison. He also inquired about the health and well-being of his child while she was in foster care, and about the

DNA test during the period when the test had to be completed and when he was waiting for results to confirm his paternity. Birth father also participated in dependency hearings and permanency review hearings before the Juvenile Division.

The caseworker testified that birth father did not request visits with the child, and also that she did not raise the issue of visits with him. While he was incarcerated, his goals set by OCY on the family service plan were limited to cooperating with OCY, keeping OCY updated on his potential date for release, and cooperating with Domestic Relations. He complied with all of these goals. No goals regarding efforts to create and maintain a relationship with his child were articulated by OCY during the period of his incarceration.

Following his release from prison on October 17, 2018, birth father met with his OCY caseworker on October 24, 2018, and discussed his goals for reunification and requested visits with his daughter, who was then living in Florida with her maternal grandmother. On or about November 21, 2018, OCY referred birth father for Family Reunification Services and worked with him to arrange for supervised visits with his child in Florida. Birth father, who is on parole until October 2022, worked with his parole officer to secure permission to travel to Florida for these supervised visits. Birth father had his first supervised visits with the child on December 6, 7, and 8 of 2018 in Florida, followed by another set of supervised visits in Florida on January 3, 4 and 5, 2019, and a third set of visits in Florida on three consecutive days in February 2019, for a total of nine visits of one and a half hours each. In addition, as noted above, birth father had two interactions with the child by telephone.

Since he was released from prison, in addition to scheduling visits with the child in Florida, birth father has maintained stable and appropriate housing, has achieved and maintained employment and has been cooperative with OCY. Birth father also obtained a mental health evaluation and a drug and alcohol evaluation as requested by OCY and provided these evaluations to OCY in January 2019, and has complied with recommendations for continuing therapy.

OCY, in communicating its expectations to birth father about what he would need to do to establish and maintain a parental relationship with the child, did not identify or require any specific actions during the period of his incarceration, but rather focused on what he could and should do following his release. It is troubling that OCY did not recommend or require that father take specific steps to demonstrate during his incarceration that he would utilize "those resources at his or her command while in prison in continuing a close relationship with the child." *In re: Adoption of McCray*, 460 Pa. 210, 331 A.2d 652, 655 (1975). Birth father did not present evidence that, while he was incarcerated, he requested visits with his child, that he sent cards, letters, clothing, toys, photos or gifts to his child or that he provided financial or emotional support for his child in any way. However, he did participate in Juvenile Court proceedings, stayed in contact with and cooperated with his OCY caseworker, planned to request formal visits with child after his release, and engaged in informal interactions by telephone during visits that were scheduled for birth mother.

ANALYSIS AND APPLICATION OF LAW TO BIRTH FATHER

With respect to the birth father, the most relevant ground for termination of parental rights alleged by petitioner is § 2511(a)(1). No evidence was presented that birth father lacks the capacity to parent, and therefore, this Court cannot consider termination under §2511(a)(2). Moreover, birth father is no longer incarcerated and is making significant efforts to visit the child and establish a relationship with her. Therefore, with respect to the birth father, the grounds under § 2511(a)(5) cannot be established, as the circumstances as far as his behavior and relationship with the child is concerned, have not continued.

To satisfy the requirements of § 2511(a)(1), the petitioner must produce clear and convincing evidence of conduct, sustained for at least the six months prior to the filing of the termination petition, which reveals a settled intent to relinquish parental claim to a child or a refusal or failure to perform parental duties.

The Pennsylvania Supreme Court has long held that parental rights may be terminated under § 2511(a)(1) "[w]here the parent does not exercise reasonable firmness in declining to yield to obstacles." *In re: Adoption of McCray, supra*, 460 Pa. at 217, 331 A.2d at 655 (1975), citing *In Re: Adoption of J.R.F.*, 27 Somerset L.J. at 304.

In this case, birth father had no relationship with the child before she came into the custody of OCY, because he was already incarcerated before her birth. Therefore, he had no close relationship with the child to maintain, but rather had the difficult task of creating a new relationship with the child. The OCY caseworker indicated in her testimony that even if he had requested visits with his child, visits might have been denied by OCY or the Juvenile Court due to the age of the child and the distance to

transport a child under one year old to and from the prison. He remained incarcerated until the child was 14 months old, by which time she had already been placed in Florida with her maternal grandmother. Nevertheless, birth father did arrange on his own with birth mother to participate in several visits with the child by telephone.

The Pennsylvania Supreme Court has issued several significant opinions regarding termination of parental rights under § 2511(a)(1), or its predecessor, in which the parent defending against the petition for termination of rights was or had been incarcerated. In *In re: S.P.*,616 Pa. 309, 47 A.3d 817 (2012), the Supreme Court reviewed the history of its decisions in this area, including *In re: McCray, supra*, and also the following cases: *In re: Adoption of Baby Boy A. v. Catholic Social Services of the Diocese of Harrisburg, Pennsylvania, Inc.*, 512 Pa. 517, 517 A.2d 1244 (1986) (affirming termination of parental rights where father failed to fulfill his parental duties by neglecting to communicate with his child during a fifteen-month period in prison); *In re: Adoption of Infant Male M.*, 485 Pa. 77, 401 A.2d 301 (1979) (affirming termination of parental rights where incarcerated father failed to utilize resources available); and *In re: M. T. T.'s Adoption*, 467 Pa. 88, 354 A.2d 564 (1976) (holding termination based upon abandonment precluded where incarcerated father utilized available resources). Under these precedents, the focus of the Court in considering a petition for termination of parental rights under § 2511(a)(1) must be on whether the birth father demonstrated reasonable firmness and utilized all of the resources reasonably available to him to create and maintain an important, parental relationship with the child, even during the period that he was incarcerated.

In *In re S.P.*, the Court discussed the reasoning in *McCray* as follows:

> Applying in *McCray* the provision for termination of parental rights based upon abandonment, now codified as § 2511(a)(1), we noted that a parent "has an affirmative duty to love, protect and support his child and to make an effort to maintain communication and association with that child." *Id.* at 655. We observed that the father's incarceration made his performance of this duty "more difficult." *Id.*
>
> . . . . [in *McCray*], we stated:
>
> > [A] parent's absence and/or failure to support due to incarceration is not conclusive on the issue of abandonment. Nevertheless, we are not willing to completely toll a parent's responsibilities during his or her incarceration. Rather, we 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. Indeed, in *McCray*, this Court agreed with the trial court and concluded that termination was appropriate where the father failed to perform parental duties for a six month period of time.

In Re: S.P., supra, 616 Pa. at 327-328, 47 A.3d at 828 (2012).

In this case, OCY did not provide birth father with guidance or set expectations consistent with this standard – that the parent while incarcerated should demonstrate a commitment to parenting by using all available resources to communicate with and support his child. The parent must demonstrate, even during a period of absence due to incarceration, that parenting his child is a priority in his life. It is problematic that OCY

did not set expectations for birth father to make affirmative contact with the child during his incarceration. In any event, birth father did, through his own initiative, have contact with the child over FaceTime or telephone at certain visits scheduled between birth mother and the child.

It is conceded by OCY that birth father has complied with all of the goals set for him, has complied with the terms of his parole and has achieved employment and stable housing. Although termination of parental rights under § 2511(a)(1) may occur where a parent has been absent from the child's life and has failed to seek visits or attempt to maintain contact for a period of six months preceding the filing of the petition, in this case, father's conduct, while severely limited, does not demonstrate a complete failure to parent during the period of his incarceration.

When considering a petition for termination of parental rights under § 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. § 2511(b). Therefore, with respect to this alleged ground for termination of the birth father's rights, the Court may not consider any remedial efforts of the birth father that were initiated after early November 2018, when the birth father first received notice of the filing of the petition for termination of his parental rights and the Court's initial scheduling decree was issued. A verification of service filed by OCY indicates that notice of the petition for involuntary termination of parental rights and this court's preliminary scheduling decree were mailed to birth father on November 6, 2018, that the certified mail was not accepted but that the first-class mail was not returned to OCY. Birth father's attorney represented that birth father subsequently retrieved the

certified mail from the post office in early December 2018. Therefore, this Court concludes that notice of the filing of the petition was delivered to birth father by first-class mail on or about November 10, 2018, and that he obtained a copy of the notice via certified mail, which he picked up in early December. However, it is clear in this case that birth father's requests for visits were made beginning before he was released from prison in October of 2018, and that he pursued his rights and requests for visits promptly within one week of the date of his release from prison on October 17, 2018. Although the actual visits with the child scheduled in Florida did not commence until December 2018, birth father has been consistent in requesting that visits begin, as well as in meeting all of his other goals. Birth father also participated in and cooperated with Time Limited Family Reunification services, which began in late November 2018. Even though his visits with the child that occurred after he received notice of the petition may not be considered, it is evident that throughout the period of his incarceration and immediately upon his release he was cooperative with OCY, took steps to establish secure housing and employment, firmly and consistently requested visits with his child and placed himself in the best possible position to establish and deepen a relationship with his child.

In this case the Court concludes that the evidence with respect to the birth father does not establish that he has a settled purpose of relinquishing parental rights. It is true that the father did relatively little to maintain a parent-child relationship while he was in prison. It is also problematic that OCY offered no visits and set no expectations for birth father to maintain contact, connect with, support or provide for the child while he was in prison. The unusual facts of this case lead this Court to conclude that while birth father did not meet or even attempt to meet all of the child's needs, birth father did not entirely

fail or refuse to parent during the time he served in prison. He made use of the limited opportunities available to him to see and connect with the child. He also cooperated with OCY and laid the groundwork for visits to occur almost as soon as he was released. While his actions and efforts may have fallen short of the ideal, this Court cannot conclude that the Office of Children and Youth has established a basis for termination of birth father's parental rights by clear and convincing evidence.

Although this Court concludes that none of the alleged grounds termination of birth father's parental rights has been established by clear and convincing evidence, birth father must clearly and consistently exert himself to establish and maintain a role as a loving, caring parent who is a consistent presence in his daughter's life.

> There is no simple or easy definition of parental duties. Parental duty is best understood in relation to the needs of a child. A child needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the child. Thus, this court has held that the parental obligation is a positive duty which requires affirmative performance. This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child. Because a child needs more than a benefactor, parental duty requires that a parent exert himself to take and maintain a place of importance in the child's life.

In re B.N.M., 856 A.2d 847, 855 (Pa. Super. 2004) (quoting *In re C.M.S.*, 832 A.2d 457, 462 (Pa. Super. 2003)).

In this case, the Court hereby determines that OCY has failed to establish any ground for termination of the birth father's parental rights by clear and convincing evidence. For this reason, with respect to the birth father, the petition for termination of parental rights will be **DENIED.**

CONSIDERATION OF CHILD'S NEEDS AND WELFARE UNDER § 2511(b)

The focus in considering a petition to terminate parental rights under § 2511(a) is on the parent, but under § 2511(b), the focus is on the child. Above all else in determining whether parental rights should be terminated, adequate consideration must be given to the needs and welfare of the children involved. *In re Child M.*, 452 Pa.Super. 230, 681 A.2d 793 (1996), *appeal denied,* 546 Pa. 674, 686 A.2d 1307 (1996). The Pennsylvania Supreme Court in 2013 stated as follows:

> [I]f the grounds for termination under subsection (a) are met, a court "shall give primary consideration to the developmental, physical and emotional needs and welfare of the child." 23 Pa.C.S. § 2511(b). The emotional needs and welfare of the child have been properly interpreted to include "[i]ntangibles such as love, comfort, security, and stability." *In re K.M.*, 53 A.3d 781, 791 (Pa. Super. 2012). In *In re E.M.*, [620 A.2d 481, 485 (Pa. 1993)], the Pennsylvania Superior Court held that the determination of the child's "needs and welfare" requires consideration of the emotional bonds between the parent and child. The "utmost attention" should be paid to discerning the effect on the child of permanently severing the parental bond. *In re K.M.*, 53 A.3d at 791.

In re T.S.M., 71 A.3d 251, 267 (Pa. 2013).

Section (b) of the statute requires the Court to give primary consideration to the developmental, physical and emotional needs and welfare of the child. The Superior Court has held that under the Adoption Act, "the health and safety of the child supersede all other considerations." In considering each child's needs and welfare, a court must consider the role of the parental bond in the child's life, specifically whether a parental bond exists to such an extent that severing this relationship would be contrary to the needs and welfare of each child.

In this case, the testimony clearly established that the child is happy and playful and receives love and affection in the home of her maternal grandmother, and all of her needs are being met. Unfortunately, her birth mother has repeatedly demonstrated that she cannot permit the child to engage in normal play and repeatedly, when the child was in her care, took the child for unnecessary medical and emergency room visits, and repeatedly squandered opportunities to engage in healthy and happy visits with her child, obsessing instead over imagined bruises, scratches, and injuries. While birth mother attempts to characterize this as meeting her child's needs and caring for her, in reality this extreme behavior by birth mother has prevented birth mother from developing a healthy parent-child relationship with her daughter. Birth mother's failures to cooperate with OCY, to address her mental health needs and to provide evidence of her consistent participation in treatment have further impeded her ability to develop and maintain a healthy parent-child relationship with her child.

CONCLUSION

Therefore, the Court finds from the evidence and testimony that the petitioner has established a basis for terminating the parental rights of birth mother, R.A.S., under §§ 2511(a)(2) and 2511(a)(5) of the Adoption Act. In addition, the Court finds that termination of the parental rights of the birth mother will best serve the needs and welfare of the child and will not irreparably harm the child.

However, the Court finds that the petitioner has not established a ground for termination of the birth father's rights by clear and convincing evidence, and therefore, with respect to the birth father, the petition for termination of parental rights must be denied.

Where the record supports the termination of parental rights of one parent only, while not supporting the termination of parental rights of another parent, Pennsylvania's appellate courts have held that it is appropriate for the trial court to enter an order terminating the rights of one parent. *See In re A.C.*, No. 1420 WDA 2014, 2015 WL 7084131, at *5 (Pa. Super. Ct. May 11, 2015)(discussing authority for a trial court to terminate the parental rights of one parent while not terminating the rights of another parent); *In re C.W.U., Jr.*, 33 A.3d 1, 2011 Pa. Super 185; *In re Burns*, 379 A.2d 535, 541 (Pa.1977) ("Nothing in the Adoption Act requires that an agency, which has assumed custody of a child, must establish grounds for the involuntary termination of both parents, before it can obtain such a decree as to either.")

A final decree terminating the parental rights of the birth mother, R.A.S., will be entered on the docket on the same date as this Opinion. A final decree denying the petition for termination of parental rights of the birth father, C.J., will be entered on the docket on the same date as this Opinion. An appeal from either final decree may be taken to the Superior Court by filing a notice of appeal within thirty (30) days of the entry on the docket of either final decree. *See*, Pennsylvania Rule of Appellate Procedure 341.

BY THE COURT:

LOIS E. MURPHY A.J.

This Opinion e-filed May 16 2019.

Secretary

Copy of the above e-mailed to:
Alisa Levine, Esquire – OCY Solicitor
Ed Berrios, Jr. – OCY Paralegal
Rich Simon, Esquire- GAL
Henry Crocker, Esquire – Counsel for Father
Raquel Serafin - Birth Mother

Secretary

THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

No. 2018-A0201

IN RE: Adoption of
B M S- DOB 8/14/17

INVOLUNTARY TERMINATION OF PARENTAL RIGHTS FOR BIRTH MOTHER, RAQUEL ANN SERAFIN

FINAL DECREE

AND NOW, this 16th day of May, 2019, after review of the record and after hearing, the court makes the following findings and judicial determinations:

1. Petitioner has established a legal basis for terminating the parental rights of birth mother, Raquel Ann Serafin.

2. The following subsection of 23 Pa. C.S.A. §2511 establishes a basis for terminating the parental rights of respondent:

   Subsection (a)(2) and (a)(5) of Pa. C.S.A. § 2511

3. Specific findings have been placed on the record at the end of the evidentiary hearing

4. Having given primary consideration as required under 23 Pa. C.S. §2511(b), this Court finds that the developmental, physical and emotional needs and welfare of the Adoptee will be best served by the termination of birth mother's parental rights.

5. All of the parental rights of birth mother, to Adoptee are hereby forever terminated and Adoptee may be adopted without further consent of or notice to birth mother.

6. The custody of adoptee shall remain with the Montgomery County Office of Children and Youth until further order of the Court.

BY THE COURT:

LOIS E. MURPHY, A. J.

Copy of the above order Mailed/E-Filed 5/16/19 to:
Alisa Levine, Esq. – OCY
Edward Berrios- OCY Paralegal
Linda Mills- OCY Secretary
Richard Simon, Esq.- GAL
Henry Crocker, Esq. – Counsel for Birth Father
Mailed/emailed to:
Raquel Ann Serafin -Birth Mother, Pro se
qbot8887@gmail.com
Chambers

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: B.M.S.	:	No. 608 MAL 2019
PETITION OF: R.A.S., MOTHER	:	Petition for Allowance of Appeal from the Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 25th day of November, 2019, the Petition for Allowance of Appeal is **DENIED**.

A True Copy Elizabeth E. Zisk
As Of 11/25/2019

Attest: _____
Chief Clerk
Supreme Court of Pennsylvania

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: B.M.S.	:	No. 608 MAL 2019
PETITION OF: R.A.S., MOTHER	:	

ORDER

PER CURIAM

AND NOW, this 24th day of December, 2019, the Application for Reconsideration and the Application for Relief Pa.R.A.P. 2501(a) are denied.

A True Copy Elizabeth E. Zisk
As Of 12/24/2019

Attest:
Chief Clerk
Supreme Court of Pennsylvania