

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

IN THE INTEREST OF: E.D.A., III, A : IN THE SUPERIOR COURT OF
MINOR : PENNSYLVANIA

APPEAL OF: E.D.A., JR., FATHER :
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: No. 683 MDA 2022

Appeal from the Decree Entered April 20, 2022
In the Court of Common Pleas of York County Orphans' Court at No(s):
2022-0007a,
2022-0008a, 2022-0009a,
2022-0010a, 2022-0019a

IN THE INTEREST OF: E.J.A., A : IN THE SUPERIOR COURT OF
MINOR : PENNSYLVANIA

APPEAL OF: E.A., JR., FATHER :
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: No. 684 MDA 2022

Appeal from the Decree Entered April 20, 2022
In the Court of Common Pleas of York County Orphans' Court at No(s):
2022-0009a

IN THE INT. OF: R.M.A., A MINOR : IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: E.A., JR., FATHER :
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: No. 685 MDA 2022

Appeal from the Decree Entered April 20, 2022
In the Court of Common Pleas of York County Orphans' Court at No(s):
2022-0010a

IN THE INT. OF: A.B.A., A MINOR	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
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APPEAL OF: E.A., JR., FATHER	:	
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	:	No. 686 MDA 2022

Appeal from the Decree Entered April 20, 2022
 In the Court of Common Pleas of York County Orphans' Court at No(s):
 2022-0019a

IN THE INTEREST OF: B.W., A MINOR	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
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Appeal from the Decree Entered April 20, 2022
 In the Court of Common Pleas of York County Orphans' Court at No(s):
 2022-0007a

BEFORE: BOWES, J., McCAFFERY, J., and STEVENS, P.J.E.*

MEMORANDUM BY BOWES, J.: **FILED DECEMBER 14, 2023**

E.A., Jr. ("Father"), appeals from the decrees entered on April 20, 2022, which terminated involuntarily his parental rights to B.W., born in May 2014;

* Former Justice specially assigned to the Superior Court.

Ed.A., born in June 2015; R.A., born in June 2018; El.A., born in August 2019; and A.A., born in June 2021.¹ We affirm.

The York County Office of Children, Youth, and Families (“CYF”) first became involved with the family in 2019 due to concerns with substance abuse by Mother and Father. A referral was made to CYF in August 2020 based on an allegation that they were abusing drugs and not properly disciplining or supervising the four oldest children. Those children were placed into care and adjudicated dependent on September 16, 2020. After A.A. was born, he was likewise placed into care and adjudicated dependent.²

¹ We have adjusted the abbreviations used within this writing to align with those used by this Court in several related cases presently or recently before this Court. To wit, with respect to termination, T.W.A. (“Mother”), El.A., and R.A., have also appealed, and those appeals are docketed at 755-759 MDA 2022, 740 MDA 2022, and 741 MDA 2022, respectively. Additionally, Father and Mother also appealed the goal change from reunification to adoption, docketed at 201-205 MDA 2022 and 295-299 MDA 2022, respectively. Finally, Father and Mother appealed from an order finding them both perpetrators of abuse as to B.W. and El.A. This Court stayed all matters, including the instant termination appeal, pending resolution of the abuse appeals. Ultimately, we affirmed the findings of abuse. **See *Int. of B.W.***, 2023 WL 5526687 (Pa.Super. 2023) (non-precedential decision) (affirming the finding of abuse as to Father); ***Int. of B.W.***, 290 A.3d 702, 2022 WL 17973239 (Pa.Super. 2022) (non-precedential decision) (affirming the finding of abuse as to Mother). Although the stay has been lifted in the termination matters, it remains active on the goal change appeals. Regrettably, the cumulative effect has been the tragic prolongation of several Children’s Fast Track cases for this family, which are, by nature, meant to be resolved quickly by this Court for the benefit of the impacted children.

² All five children were eventually placed in the same pre-adoptive resource home along with an older half-sibling, where they remained at the time of the termination hearing.

As a result of the dependency adjudications, Father was ordered to, *inter alia*, cooperate with both announced and unannounced home visits by CYF; complete a mental health evaluation and follow treatment recommendations; actively participate in services; obtain employment and provide proof of income to CYF; maintain safe, clean, and appropriate housing; submit to random drug testing; and continue his drug and alcohol treatment and participation in the methadone program. **See** Family Service Plan, 10/2/20, at 14, 16-18; **see also** Family Service Plan, 3/12/21, at 14 (adding, among other things, that Father notify CYF of any change in household members, attend medical appointments for the children, and adhere to the conditions of his probation); Family Service Plan, 8/9/21 (same, issued following A.A.'s birth and adjudication of dependency).

Meanwhile, in the companion dependency matters, allegations of physical abuse were made against Father and Mother in December 2020 and January 2021, as to B.W. and El.A., leading to an abuse investigation. The report included allegations that the parents slapped the children with an open hand, including when El.A. was less than one month old, and struck the children with a belt.

This Court recounted the testimony offered at the March 10, 2022 finding of abuse hearing as follows:

The [Child Advocacy Center] forensic interviewer . . . testified: "B.W. disclosed being beat — his words — that El.A. was slapped with a belt," Father beat R.A. and El.A., Mother slapped B.W., and B.W. observed potential drug use. B.W. further reported El.A. suffered injuries, including bleeding from the mouth.

CYF Caseworker [Kristen] Marshall, who observed the interview, testified:

B.W. disclosed that he and his siblings were being punished with a black belt with little spikes on it. He reported that it was hurtful. B.W. actually stated it hurt more than a gun. He stated the spikes were sharp and caused him to bleed. He stated he would cry and he was hit over and over. The very red marks like — were left like it was bleeding, but it wasn't. And he stated that both parents would hit him.

CYF additionally entered into evidence the forensic interview summary and a DVD video of the forensic interview. Ms. Marshall sought, but did not receive, medical records that might show physical injury to B.W. She also attempted multiple times to schedule an interview with Mother and Father, but was unsuccessful.

With respect to El.A., Ms. Marshall testified that B.W. stated Mother and Father sometimes slapped El.A., so there was blood under his tongue, and that El.A. would cry a lot and neighbors would hear. As stated above, B.W.'s statements led to a referral as to El.A. An investigation revealed El.A. was taken to the York Hospital emergency room for bleeding from the mouth in August 2019 when he was less than a month old.

Int. of B.W., 290 A.3d 702, 2022 WL 17973239, at *2-3 (Pa.Super. 2022) (non-precedential decision) (cleaned up). Following a prolonged investigation, partially due to the parents' refusal to submit to police interviews, the court found both Mother and Father to be perpetrators of abuse against B.W. and El.A. As noted, this Court affirmed those findings.

On January 19, 2022, CYF filed petitions to terminate Father's rights to all five children pursuant to 23 Pa.C.S. § 2511(a)(1), (2), and (5). As to the four oldest children, B.W., Ed.A., R.A., and El.A., CYF also sought termination pursuant to § 2511(a)(8).

The court held hearings on the petitions on April 1 and 18, 2022.³ With respect to Father, CYF presented the testimony of caseworker Kristen Marshall, Father's probation officer and methadone counselor, and the family advocate and family therapist from Pressley Ridge. Through their testimony, it was relayed that Father had been consistent with his visits with the children and had made significant progress resolving his substance abuse. However, as of the first day of the hearing, CYF remained concerned because Father had not alleviated the environmental concerns at the house, made progress in his mental health treatment, or established financial stability. Additionally, visits had not progressed beyond supervised, and Father recently tested positive for alcohol, which particularly concerned CYF given his addiction issues and because one of the positive results was recorded immediately before a visit.

At the second hearing, over two weeks later, Father and Mother testified. Mother attempted to demonstrate that the house had since been made appropriate for reunification. For his part, Father recounted his work history and explained that he had scheduled an appointment to recommence his mental health treatment the following day. Finally, Father presented testimony from another CYF caseworker regarding Ms. Marshall's alleged bias.

The children's GAL argued that termination was in the best interests of each child. Specifically, the GAL was concerned that the physical abuse had

³ At the termination hearing, each child had their own attorney representing their respective legal interests. David Worley, Esquire, collectively represented the best interests of all five children as their guardian *ad litem* ("GAL").

been unaddressed and was wary of the last-minute efforts by the parents to finally re-initiate mental health treatment and attempt to make the home environment appropriate. Through legal counsel, the children expressed the following: B.W. wanted to return to his parents; Ed.A. wished to remain in the foster home and not return to his parent's home;⁴ El.A., despite the finding of abuse, had a strong bond with his parents and would oppose termination; R.A. also had a strong bond with her parents and would oppose termination; and A.A., given his young age, could not express a legal position different from that expressed by the GAL.

At the conclusion of the hearing, adopting the GAL's concerns, the orphans' court terminated Father's parental rights as to all five children, and issued separate orders changing each child's permanency goal to adoption. Father timely filed a notice of appeal and concise statement pursuant to Pa.R.A.P. 1925(a)(2). The orphans' court complied with Rule 1925(a).

Father now presents a single question for this Court's review: "Did the [orphans'] court abuse its discretion and/or err as a matter of law and/or exercise manifestly unreasonable judgment in changing the goal from reunification with a parent to adoption as the Agency failed to meet its burden based upon the evidence and testimony presented?" Father's brief at 5

⁴ Given the bond between Ed.A. and his parents, Ed.A.'s attorney interpreted his wish not to return to his parents' home as a request for more time for Mother and Father to continue to make progress and not as a request for termination of their parental rights.

(cleaned up).⁵ In other words, he assails the orphans' court's findings that CYF satisfied its burden as to 23 Pa.C.S. § 2511(a)(1), (2), (5), (8), and (b). **See *id.*** at 28-29 (summarizing Father's arguments challenging the termination decrees).

Mindful of the history set forth above, we begin with the relevant legal principles. Our standard of review for appeals from orders involuntarily terminating parental rights is well-settled:

In cases concerning the involuntary termination of parental rights, appellate review is limited to a determination of whether the decree of the termination court is supported by competent evidence. This standard of review corresponds to the standard employed in dependency cases, and requires appellate courts to accept the findings of fact and credibility determinations of the trial court if they are supported by the record, but it does not require the appellate court to accept the lower court's inferences or conclusions of law. That is, if the factual findings are supported, we must determine whether the trial court made an error of law or abused its discretion. An abuse of discretion does not result merely because the reviewing court might have reached a different conclusion; we reverse for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill will. Thus, absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand. We have previously emphasized our deference to trial courts that often have first-hand observations of the parties spanning multiple hearings. However, 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.

⁵ The GAL for all five children, CYF, and legal counsel for B.W. and Ed.A., respectively, filed a single, collective brief in support of affirming the orphans' court's decrees.

In re Adoption of C.M., 255 A.3d 343, 358–59 (Pa. 2021) (cleaned up). “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 M.G. & J.G.***, 855 A.2d 68, 73-74 (Pa.Super. 2004) (citation omitted). “[I]f competent evidence supports the trial court’s findings, we will affirm even if the record could also support the opposite result.” ***In re Adoption of T.B.B.***, 835 A.2d 387, 394 (Pa.Super. 2003) (citation omitted).

Termination of parental rights is governed by § 2511 of the Adoption Act and requires a bifurcated analysis of the grounds for termination followed by the needs and welfare of the child.

Our case law has made clear that under [§] 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 [§] 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 [§] 2511(b): determination of the needs and welfare of the child under the standard of best interests of the child. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child, with close attention paid to the effect on the child of permanently severing any such bond.

In re L.M., 923 A.2d 505, 511 (Pa.Super. 2007) (citations omitted). We have defined clear and convincing evidence as that which 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 C.S.***, 761 A.2d 1197, 1201 (Pa.Super. 2000) (*en banc*) (cleaned up).

Termination is proper when the moving party proves grounds for termination under any subsection of § 2511(a), as well as § 2511(b). ***T.B.B., supra*** at 395. Father asserts that CYF failed to establish by clear and convincing evidence the statutory grounds for termination of her parental rights pursuant to 23 Pa.C.S. § 2511(a)(1), (2), (5), (8), and (b). To affirm the termination of parental rights, this Court need only agree with the orphans’ court as to any one subsection of § 2511(a), as well as § 2511(b). ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa.Super. 2004) (*en banc*). We focus our analysis for all five children on § 2511(a)(5)⁶ and (b), which provide as follows:

⁶ We cannot countenance the dissent’s conclusion that because A.A. was placed into care following his birth, he was never in Father’s care and therefore, because he was not “removed” from Father’s care, § (a)(5) cannot apply. ***See*** Dissent at 19. Our Court has held that § (a)(5) does not apply when a child is removed while the parent is incarcerated. ***See In re C.S.***, 761 A.2d 1197, 1200 (Pa.Super. 2000) (*en banc*). In such a scenario, the parent could not have exercised custody, regardless of whether they were otherwise capable. Respectfully, that is not the case here. Father was not incarcerated at the time of A.A.’s birth such that it was impossible for him to have custody of A.A. Both Father and Mother were available to take custody of A.A. and would have, in fact, been in custody of A.A. **but for** his removal by CYF at the hospital. In other words, despite A.A. not being removed from the home of Father and Mother, he was clearly removed from their care at the time of his birth. That is consistent with both the statutory language and our case law. ***See e.g., In re Adoption of J.J.***, 515 A.2d 883, 889-890 (Pa. 1986) (affirming termination pursuant to § (a)(5) where child had been under the care of the agency since his birth and where the father had “never had custody of, nor provided support for, [the] child”). Accordingly, we find no impediment to applying § (a)(5) as to A.A.

(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:

. . . .

(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.

. . . .

(b) Other considerations.--The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

23 Pa.C.S. § 2511.

Pursuant to this framework, we first address whether the orphans' court abused its discretion by terminating Father's parental rights pursuant to § 2511(a)(5). Termination under this subsection requires that the moving party prove the following elements:

(1) the child has been removed from parental care for at least six months; (2) the conditions which led to the child's removal or

placement continue to exist; (3) the parents cannot or will not remedy the conditions which led to removal or placement within a reasonable period time; (4) the services reasonably available to the parents are unlikely to remedy the conditions which led to removal or placement within a reasonable period of time; and (5) termination of parental rights would best serve the needs and welfare of the child.

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

Father argues that the sole reason for adjudication was the parents' drug issues, and he has adequately addressed those concerns. **See** Father's brief at 39-40. As to CYF's concerns about abuse, Father denies any abuse and contends that, in any event, CYF failed to offer any services to address potential abuse. **Id.** at 41-42. He maintains that he "did what he was asked to do and the improvements he made in his parenting were testified to by the team." **Id.** at 42. Finally, he challenges the court's conclusions that there remained concerns regarding environmental issues and stability. **Id.** at 42-43. He claims that he has resided in the same home, which a team member deemed appropriate in January 2022; provided financial documentation to the team; and consistently visited with the children. **Id.** at 43.

While Father urges us to accept the testimony that favored his assertion that the environmental issues had been resolved, it was wholly within the province of the orphans' court to make credibility determinations regarding the testimony offered. Those credibility determinations are supported by the record and must therefore remain undisturbed. **See M.G., supra** at 73-74; **T.B.B., supra** at 394. Accepting these credibility determinations, our review of the certified record indicates that it was not solely the inability to provide

financial documentation that supported termination. Rather, it was the failure to demonstrate the ability to provide safe and stable care for the children, as evidenced by the housing concerns, Father's declining to take seriously the mental health treatment, and lack of evidence of a stable income to support five children.

Ms. Marshall, who had been assigned to the case since October 2020, testified that Father's primary concerns at adjudication were substance abuse, environmental issues in the home, mental health, and drug testing. **See** N.T. Hearing, 4/1/22, at 197. With regard to the environmental issues, as noted hereinabove, Father's goals included complying with unannounced and announced home visits by CYF, maintaining safe appropriate housing, and performing routine housekeeping.

During Ms. Marshall's tenure, she attempted to make eight home visits. In November 2020, there were lice issues, the heavy smell of animal feces and urine smell, and problems with the toilet, stairwell railing, and one of the bedroom floors. At the next two visits, both in December 2020, the toilet and railing issues had been repaired. In January 2021, she was unable to enter the house due to COVID-19 concerns and lice. In July 2021, a proxy visited the house but was not permitted inside. Nonetheless, the proxy noted that it smelled like garbage outside and the front porch was messy. In August 2021, Ms. Marshall was denied entry into the house but noted a strong smell of animal feces when the door was opened. Again, in January 2022, she was not

allowed into the house to conduct a home visit. Her last visit was conducted on March 24, 2022. **See** N.T. Hearing, 4/18/22, at 46-47.

During the last visit, which was unannounced, Mother was away from the home, but returned when called and was inside for a few minutes before admitting Ms. Marshall and her supervisor into the home. There was a potent smell of animal feces and urine, feces in the kitchen trash, a dog peeing sporadically in the house, space heaters throughout the home, including one on top of a laundry basket filled with clothes, no sink in the only bathroom, concerns with water damage in the parents' bedroom, and animal feces in one of the children's rooms. **See** N.T. Hearing, 4/1/22, at 200-203.

Turning to the elements of § 2511(a)(5), Father does not contest that all five children were removed from his care for a period exceeding six months. Therefore, the first element is satisfied. As to the second, third, and fourth elements, the initial placement was based upon concerns about Father's drug use, inappropriate parenting, unstable employment, unsafe housing, and the need for mental health treatment. Once there were allegations and findings of abuse, that naturally became part of the concerns as to Father's parenting and ability to provide a safe home environment. The orphan's court concluded that while Father had made progress with regard to his drug treatment and the methadone program, "he could not remedy the remaining conditions within a reasonable time[,]" particularly as he "had services close unsuccessfully or declined [services.]" Orphans' Court Opinion, 6/6/22, at 27.

As the record shows, the children were removed from Father and Mother for more than parent's drug use or Father's overdose. CYF received a referral several days prior to Father's overdose. CYF had prior history with the family and feared Mother would revoke the safety plan implemented for the children's welfare. From the outset, the revised safety plan, dated 10/02/2020, provided objectives that are not beyond the control of the parent related to . . . cooperating with agency services, financial stability, providing proof of income, securing appropriate housing and sleeping quarters for the children, routine housekeeping, and Methadone treatment, etc.

Furthermore, the finding of abuse raises safety concerns regarding the children. The parent's consistent denials that anything happened regarding the finding of abuse is concerning. During the period that the children have been out of the home, Father started probation for fighting. Mother reported that an argument escalated to the point that her mother threatened to file a protection from abuse order against her. A service provider closed out services and recommended anger management because Father was inappropriate, and a permanency review report noted reports of Father and Mother fighting inside and outside of the home.

The children were removed from the home for more than six months. They have been removed for almost twenty months at this time. Parents certainly made progress with regard to the Methadone program as required by the family service plan cited. The parents could not remedy the remaining conditions within a reasonable time. Given that Father has had services close unsuccessfully or declined, it is not likely that available services will remedy the remaining conditions that led to the removal or placement of the children. . . . [T]he court believes termination serves the best interests of the children who require permanency.

There was testimony that the children enjoy their visits with their parents and are bonded to them. Despite this the court believes termination is in the children's best interests. The safety and well-being of the children is of paramount concern to the court. The children are all together in a safe environment with [their foster mother], whom they call "mom-mom," and they are receiving therapy. The children have exhibited troubling behaviors, which suggests trauma. R.A., as young as she is, has been observed placing her finger in her anus. B.W. has expressed suicidal

ideation and anxiety. B.W. and Ed.A. have been observed trying to bite each other on the buttocks and on their penises. Ed.A. has also engaged in fecal smearing. A.A. was born with a club foot that requires special care and appointments.

Id. at 26-28 (cleaned up).

Although Father addressed his drug addiction and should be commended for that, significant concerns remained as to whether Father could readily provide care for any of the children given the condition of the home, his failure to prove a stable income, and disengagement with mental health treatment, particularly in light of the findings of abuse.

[T]he statute implicitly recognizes that a child's life cannot be held in abeyance while a parent attempts to attain the maturity necessary to assume parenting responsibilities. The 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.

In re Adoption of R.J.S., 901 A.2d 502, 513 (Pa.Super. 2006). Therefore, we conclude that the orphans' court did not abuse its discretion in finding statutory support for termination pursuant to § 2511(a)(5) as to B.W., Ed.A., R.A., El.A., and A.A.

Turning to § 2511(b), we again set forth the guiding principles.

[C]ourts should consider the matter from the child's perspective, placing her developmental, physical, and emotional needs and welfare above concerns for the parent.

Accordingly, the determination of the child's particular developmental, physical, and emotional needs and welfare must be made on a case-by-case basis. We have observed the law regarding termination of parental rights should not be applied mechanically but instead always with an eye to the best interests and the needs and welfare of the particular children involved. Thus, the court must determine each child's specific needs.

Moreover, the child's emotional needs and welfare include intangibles such as love, comfort, security, and stability. As further guidance, we have identified factors, *i.e.*, specific needs and aspects of the child's welfare, that trial courts must always consider. The court must consider whether the children are in a pre-adoptive home and whether they have a bond with their foster parents. And, if the child has any bond with the biological parent, the court must conduct an analysis of that bond, which is not always an easy task.

Int. of K.T., 296 A.3d 1085, 1105–06 (Pa. 2023) (cleaned up).

This Court has emphasized that “the extent of the bond-effect analysis necessarily depends on the circumstances of the particular case.” ***In re Adoption of J.M.***, 991 A.2d 321, 324 (Pa.Super. 2010) (cleaned up). In weighing the bond considerations pursuant to § 2511(b), “courts must keep the ticking clock of childhood ever in mind.” ***In re T.S.M.***, 71 A.3d 251, 269 (Pa. 2013). “Children are young for a scant number of years, and we have an obligation to see to their healthy development quickly. When courts fail . . . the result, all too often, is catastrophically maladjusted children.” ***Id.*** A court cannot “toll the well-being and permanency” of a child indefinitely in the hope that a parent “will summon the ability to handle the responsibilities of parenting.” ***In re C.L.G.***, 956 A.2d 999, 1007 (Pa.Super. 2008) (*en banc*) (citation omitted).

The certified record supports the orphans' court's conclusion that termination was in the best interests of all five children as it relates to Father. Notably, the GAL for all five children advocated in favor of termination as being in their best interests. **See** Appellees' brief at 27-28 (arguing that termination is in the best interests of the children). The court acknowledged the bond

between the children and Father, and that Father has made progress towards some of his goals. However, the court held that it “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.” Orphans’ Court Opinion, 6/6/22, at 29 (quoting **R.J.S., supra** at 513). As the children are together, safe, and bonded with their foster mother, the court concluded that it was in their best interests to terminate Father’s parental rights so that the children could achieve permanency. **Id.**

As detailed hereinabove, the facts as found by the orphans’ court are supported by clear and convincing evidence. Its conclusions are free from legal error and, in our review, are not manifestly unreasonable, or the subject of partiality, prejudice, bias, or ill-will. **See C.M., supra** at 359. In light of our deferential standard of review, we find no abuse of discretion, and affirm the decrees terminating Father’s parental rights as to B.W., Ed.A., R.A., El.A., and A.A.

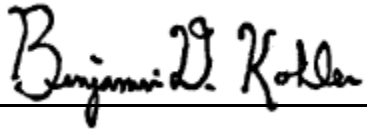
Decrees affirmed.

P.J.E. Stevens joins this Memorandum.

Judge McCaffery files a Dissenting Memorandum.

J-A23011-22

Judgment Entered.

A handwritten signature in black ink that reads "Benjamin D. Kohler". The signature is written in a cursive style and is positioned above a solid horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 12/14/2023

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APPEAL OF: E.A., JR., FATHER

: No. 687 MDA 2022

Appeal from the Decree Entered April 20, 2022
In the Court of Common Pleas of York County Orphans' Court at No(s):
2022-0007a

BEFORE: BOWES, J., McCAFFERY, J., and STEVENS, P.J.E.*

DISSENTING MEMORANDUM BY McCAFFERY, J.:

FILED DECEMBER 14, 2023

Respectfully, I disagree with the Majority's conclusion that the orphans' court decision to terminate Father's parental rights, as to all five Children,¹ was not an abuse of discretion. Instead, I would conclude the orphans' court, which was in agreement that both Parents have successfully complied with drug treatment, did not address the consistent testimony by multiple service providers across several hearings, including the termination proceedings, that both Parents have been in compliance with their housing, parenting, and mental health goals. My rationale is not that the court erred in accepting the testimony of one witness over other evidence, but rather that the court failed to address the extensive testimony that was in direct contradiction of the

* Former Justice specially assigned to the Superior Court.

¹ As two children have the initials, "E.A.," I will refer to E.A., III, as "Ed.A." and E.A. as "El.A."

testimony it cited. In light of this incomplete review, I would disagree there was clear and convincing evidence to support termination of “one of the oldest fundamental rights protected by the Due Process Clause’ of the Fourteenth Amendment.”² Thus, I dissent.

The Majority aptly summarizes that at the time the five Children were adjudicated dependent,³ CYF’s concerns were both Parents’ drug abuse, mental health, parenting skills, financial stability, and home environment. **See** Memorandum Opinion in Support of Order Pursuant to Rule 1925(a)(2)(ii) of the Pennsylvania Rules of Appellate Procedure, 6/17/22 (Trial Ct. Op., 6/17/22), at 7-8.

Although Father’s instant appeal lies from the April 20, 2022, termination order, I consider the evidence, adduced at hearings within the five months preceding that decision, to be relevant.

I. November 10, 2021, Status Review Hearing

² **See K.W. v. S.L.**, 157 A.3d 498, 502-03 (Pa. Super. 2017) (citation omitted).

³ The four older children were adjudicated dependent on September 16, 2020. At that time, their ages were approximately: B.W., six; Ed.A., five; R.A., two; and El.A., one. A.A. was born thereafter, in June of 2021, and adjudicated dependent almost two weeks later, on July 12, 2021.

First, at a status review hearing on November 10, 2021,⁴ Parents averred the criminal investigation of their alleged abuse — for which CYF received a referral 10 months earlier — was “ongoing” but had “gone nowhere[.]” N.T., 11/10/21, at 8-9. The orphans’ court directed CYF to conduct an independent investigation and provide a finding of “indicated” or “unfounded” by the next hearing in three months’ time.⁵ **Id.** at 8-9; Status Review Order, 11/10/21.

Jessica Myers, a family therapist with Pressley Ridge, testified Parents’ housing was appropriate. N.T., 11/10/21, at 23. Although there was a damaged ceiling, Parents were working with their landlord to repair it. **Id.** at 27. Parents reported their rent was paid through January. **Id.** I note Parents have lived in the same five-bedroom apartment rental since October of 2020. N.T., 4/1/22, at 199. Ms. Myers further testified that a family advocate developed a family budget, and both Parents were “very independent in

⁴ CYF caseworker Kristen Marshall did not testify at this hearing. Furthermore, I note that at this time, R.A. and El.A. lived together in kinship foster placement with D.V., their paternal grandmother. **See** N.T., 4/1/22, at 17, 216. The other three children — B.W., Ed.A., and A.A. — were living with another foster family, but shortly after the November 10, 2021, hearing, they moved to D.V.’s home so that the siblings would stay together. **Id.** at 216; N.T., 11/10/21, at 7-8.

⁵ CYF additionally reported that on October 19, 2021, Father entered a no contest plea to disorderly conduct. N.T., 11/10/21, at 59. This charge arose from “fighting” and Father received a sentence of 12 months’ probation. Status Review Order for B.W., 11/10/21, at 2.

searching for new employment.” N.T., 11/10/21, at 35-36. Father was employed through People Ready and he provided payment history for three pay periods. **Id.** at 35, 37, 62.

The following testimony about visitation was presented. Parents attended all visits and had never cancelled. N.T., 11/10/21, at 50. Ms. Myers, who supervised three visits, testified “[P]arents are progressing appropriately” and showed “positive changes.” **Id.** at 24. Michelle Mahoney, a family advocate with Pressley Ridge, also supervised visits and testified that generally, the visits were going well. N.T., 11/10/21, at 47-48. Jessica Weymer, another family advocate with Pressley Ridge, supervised the visits with respect to A.A. (then five months old) only, and she did not have any concerns with Parents’ visits. **Id.** at 55. Ms. Mahoney and Karen Rose, a CYF caseworker supervisor, both recommended increased visitation and moving visits into the community. **Id.** at 53, 59-60. The Children’s guardian *ad litem*, David Worley, Esquire (GAL), agreed with these recommendations. **Id.** at 64.

Ms. Myers testified Parents each have a therapist through True North. N.T., 11/10/21, at 28. Previously, Father was taking five milligrams of methadone, then took one milligram for one day, and chose to stop. **Id.** at 63-64. He was successfully discharged from methadone treatment on November 8, 2021. **Id.** at 28-29.

At the conclusion of this hearing, **the orphans’ court commented positively** on both Parents’ progress:

. . . I think [Father's attorney] said it very well[, that Father was complying with the objectives.] You want to put a team in place. You want to see them do their thing and you want to see the [P]arents cooperate. So far these [P]arents have done that. And this case is headed in the right direction. I'm pleased. Please keep up the good work.

Id. at 64. The court scheduled the next hearing for January 11, 2022. **Id.** at 66.

II. December 27, 2021, CYF Report

Meanwhile, on December 27, 2021, CYF caseworker Kristen Marshall filed a report,⁶ which concluded — contrary to the evidence at the status hearing approximately seven weeks earlier — that Mother and Father made “[m]inimal progress” under the permanency plan. CYF Report at 2, 4. The report acknowledged both Parents “typically . . . maintain contact with” CYF and service providers, but stated they were “unresponsive to” Caseworker Marshall’s email messages, sent on December 21, 22, 23, and 27, seeking to schedule an interview for the outstanding CPS investigations. **Id.** at 2.

The CYF report further alleged the following. The paystubs presented by Parents lacked identifying information; Parents also failed to provide proof that rent and bills were paid, bank statements, their driver licenses, vehicle registrations, and proof of insurance. CYF Report at 2-5. Parents visited “the kinship home unannounced five or six times,” and purchased \$300 Apple iPads

⁶ Caseworker Marshall filed five nearly identical reports — one for each child. For ease of discussion, I refer to these in the singular.

for the four older children for Christmas. *Id.* at 3, 5. Finally, the CYF report stated that petitions for the involuntary termination of Parents' rights were "in the process of being filed." *Id.* at 7. Nevertheless, CYF recommended "a continued primary goal of Reunification and a concurrent goal of Adoption." *Id.* at 8.

III. January 11, 2022, Permanency Review Hearing

The orphans' court conducted the next permanency review hearing on January 11, 2022. Despite the fact that CYF had not filed any petition for a goal change and, again, its report filed two weeks earlier recommended a continued primary goal of reunification, the orphans' court changed the primary goal to adoption at the end of this hearing.⁷ N.T., 1/11/22, at 49. As this hearing predated the filing of the termination petitions by less than two weeks, and the termination orders by a mere three months, I review this proceeding in detail.

First, CYF reported it found both Mother and Father indicated as perpetrators of physical abuse against both El.A. and B.W. N.T., 1/11/22, at 7. The parties acknowledged that a finding of abuse hearing was scheduled for March 10, 2022. *Id.* at 5.

⁷ Both Parents have appealed from the goal change orders: Mother at Superior Court Dockets 295 through 299 MDA 2022 and Father at Dockets 201 through 205 MDA 2022. Those appeals remain pending.

Following these introductory remarks by the parties, the orphans' court commented that "with the exhibits that we already have and so forth, [including Caseworker Marshall's report,] we really don't need to hear any testimony[.]" N.T., 1/11/22, at 7. Mother's attorney protested, and the court permitted examination of Caseworker Marshall. **Id.** at 8.

Caseworker Marshall testified to all of the following: although Parents have made "moderate" progress with their drug treatment, CYF had not observed the "stability needed for five children in the home." N.T., 1/11/22, at 10. "[P]artial visitation has still not been recommended," and when she observed one visit the prior July, it was "chaotic without appropriate boundaries . . . in disciplining and cleaning up and the [C]hildren fighting." **Id.** at 10, 15-16. Furthermore, Father failed to provide proper documentation for his employment. N.T., 1/11/22, at 14. Although Caseworker Marshall received bank statements from Pressley Ridge family advocate Yashira Luciano, some portions were "blacked out." **Id.** at 19. In any event, the documents received did not "align with the proposed budget," and the electric or gas bill had a balance of \$1,796.14. **Id.** at 20.

The testimony of the other witnesses at this hearing, however, was that Parents were successfully complying with their goals. Ms. Luciano testified that the previous night, she inspected Parents' home and concluded it was appropriate, and opined Parents achieved the goal of having appropriate housing. N.T., 1/11/22, at 24-25, 23-25, 30. Ms. Luciano further stated: she

prepared a family budget; Parents were in programs for paying the electric and gas bills; and the landlord provided her with a receipt showing rent was paid. N.T., 1/11/22, at 26, 28. Mother showed Ms. Luciano documentation of salary deposits to her bank account. **Id.** at 29. Ms. Luciano sent Caseworker Marshall the financial information that was requested, and explained, "The items that were blacked out . . . were not related to employment that needed to be verified." **Id.** at 26-27. Significantly, Ms. Luciano recommended that her services come to a successful end: "The family no longer needs advocacy. There are no other concerns or needs that the family would need to complete." **Id.** at 25.

Nicole Lam, Mother's drug and alcohol counselor at Pyramid, testified Mother was meeting the expectations of her treatment and her "[p]rognosis is very good." N.T., 1/11/22, at 34. However, in September of 2021, Ms. Lam had an hour-and-a-half telephone conversation with Caseworker Marshall. **Id.** Ms. Lam "found a lot of [Caseworker Marshall's] comments to be bias[ed], often derogatory, unprofessional," and "[v]ery stigmatized[.]" **Id.** at 35. For example, Caseworker Marshall made "generalizations concerning . . . addicts," stated Mother was "lazy" and "uses that as an excuse to relapse," and speculated that Parents were involved in "drug deals." **Id.** Ms. Lam disagreed with this portrayal of Mother, and she had no concerns with Mother's compliance with her drug program. **Id.**

Pressley Ridge family therapist Jessica Myers, testified that at visits, Parents have been providing “more structure and boundaries” and showing “much more consistent follow through[.]” N.T., 1/11/22, at 37. Ms. Myers opined that moving the visits to Parents’ home would be appropriate **if** the family were on track to reunification. **Id.** at 40. However, in light of CYF’s indication it would file a termination petition, Ms. Myers would not recommend visits in the home. **Id.** at 39-40, 41.

At the conclusion of the hearing, the orphans’ court agreed with the GAL’s oral recommendation to “flip the goals.” N.T., 1/11/22, at 49. The court thus amended the primary goal to adoption, with a concurrent goal of reunification. **Id.** Shortly thereafter, on January 19 and 27, 2022, CYF filed petitions to terminate Parents’ parental rights.

Meanwhile, on March 10, 2022, the orphans’ court conducted the finding of abuse hearing. It heard testimony that B.W. disclosed, *inter alia*, that he and El.A. were “being beat” and slapped, sometimes with a belt. **See** N.T., 3/10/22, at 12. The court rendered a finding that both Father and Mother were perpetrators of abuse against B.W. and El.A.⁸ **Id.** at 53-54.

IV. April 2022 Termination of Parental Right Hearings

⁸ As the Majority notes, both Parents appealed from this abuse finding. On December 28, 2022, this Court affirmed as to Mother (Dockets 545 & 546 MDA 2022) and on August 28, 2023, this Court affirmed as to Father (Dockets 117 & 118 MDA 2023).

Finally, with respect to the April 1 and 18, 2022, termination hearings, while the orphans' court and Majority have reviewed the testimony of Caseworker Marshall, I consider in detail the testimony of the other witnesses. First, it was reiterated that Father was successfully discharged from the drug program. N.T., 4/1/22, at 26-27. Mother was also successful in her drug treatment. **Id.** at 173.

Ms. Lam, Mother's Pyramid drug and alcohol counselor, testified, as she did at the January 11, 2022, hearing, about "biased" statements made by Caseworker Marshall in a conversation in September of 2021. N.T., 4/1/22, at 33. Caseworker Marshall "kept mentioning that she thought there was ongoing drug use, even though [Ms. Lam] confirmed [Mother] has been compliant in all aspects of her treatment." **Id.** at 34. Ms. Lam described this conversation as "[c]onfusing" and appearing to focus on how the Parents were failing, rather than how they could assist them.⁹ **Id.** at 32-33.

⁹ Additionally, CYF caseworker Patrick Duggan briefly testified to the following. He began working with CYF approximately one month earlier, and specifically with Caseworker Marshall on Parents' case one week earlier. **See** N.T., 4/1/22, at 134. Caseworker Marshall made "biased" comments to Mr. Duggan, such as, "[T]his family was trashy," and Mother "was bitchy." **Id.** at 136-38.

Following Mr. Duggan's testimony, the orphans' court stated that while it would reserve judgment as to the credibility of Caseworker Marshall, it understood that employees in the judicial system sometimes comment "about the dire nature of their jobs and the cases out of sheer frustration," and it was "not going to let Ms. Marshall leave [the] courtroom thinking [the court found]" *(Footnote Continued Next Page)*

With respect to visits, Ms. Mahoney, the Pressley Ridge family advocate, testified that visitation increased in September of 2021. N.T., 4/1/22, at 52. The family therapist, Ms. Myers, worked with Parents on parenting skills and managing the Children's behaviors, and both Parents have made "tremendous" progress. **Id.** at 56, 70. **See also id.** at 78. Ms. Mahoney would feel comfortable with unsupervised visits, but due to the then-ongoing abuse investigation, such visits were not permitted by the orphans' court. **See id.** at 62, 68. Additionally, Pressley Ridge generally does not conduct visits in the family home if there is no "solid plan" for reunification, and here, they did not "want to upset the [C]hildren by having visits in the home, if that's not where [they are] sure [the case is] headed." **Id.** at 73.

With respect to the bonds between Children and Parents, Ms. Mahoney also testified to the following. All the Children enjoy the time they spend with Parents, and they feel safe around Father. N.T., 4/1/22, at 61, 63. At most visits, B.W. articulates that he does not want the visits to end, and he tells his parents, "I love you." **Id.** at 59-60. R.A. is "particularly attached to [M]other," and while she also goes to Father, "she just tends to want to spend time with [M]other." **Id.** at 64-65. With respect to Ed.A., Ms. Mahoney did not observe any indication he was fearful of or not comfortable with Parents.

she did . . . a terrible thing. They were words said in frustration." N.T., 4/1/22, at 167-68.

Id. at 68. El.A. is “very attached” to Father, and is affectionate with both Parents. **Id.** at 69.

Ms. Myers testified both B.W. and Ed.A. have a connection and healthy relationship with both Parents. N.T., 4/1/22, at 97, 98. Both boys express not wanting visits to end, and express frustration that they cannot see Parents more often or go to other places with Parents. **Id.** at 99. R.A. and El.A. have good relationships with Parents as well. **Id.** at 101-02. Both Parents share in caring for A.A.’s needs, including changing diapers, feeding him, and holding and playing with him. **Id.** at 102.

Meanwhile, Caseworker Marshall, had observed one visit before the filing of the termination petition filing — on June 23, 2021 — and one visit thereafter, on February 16, 2022. **See** N.T., 4/18/22, at 25-26. She acknowledged the oldest child, B.W., has a parental bond with Parents, he is happy and excited to see them, and he has indicated he would like to be reunited with Parents. **Id.** at 209, 218. She stated Ed.A., R.A., and El.A. all similarly have a bond with Mother and Father, although these three Children had not indicated to her whether they would like to reunite with Parents. **Id.** at 210-11, 220-21; N.T., 4/18/22, at 37. Nevertheless, Caseworker Marshall opined termination would not have any long-term, negative impact on any of these Children. N.T., 4/1/18, at 238-39.

As stated above, Parents have been living in the same home since October of 2020. N.T., 4/1/22, at 199. Caseworker Marshall conducted home

inspections on November 20 and December 24, 2020, and additionally attempted to inspect the home on August 20, 2021, and January 10, 2022, but was denied entry. N.T., 4/18/22, at 46-47. Caseworker Marshall, along with her supervisor Karen Rose, made an unannounced home visit on March 24, 2022 — approximately one week before the first termination hearing. N.T., 4/1/22, at 200. They observed: a “heavy” smell of animal feces and urine; “piles” of animal feces in the trash can; a dog “peeing sporadically” in the house; space heaters throughout the house, including one atop a laundry basket; and no sink in the only bathroom. **Id.** at 200-01, 203. With regard to the ceiling in Parents’ bedroom, although there was a repair, there was still “an active leak.” **Id.** at 201. Caseworker Marshall initially stated there was no bed set for the youngest child, A.A., but on cross-examination, she acknowledged there was a crib, but it had not been set up. **Id.** at 201; N.T., 4/18/22, at 17. In sum, she opined Parents could not provide safe and appropriate housing for the Children. N.T., 4/1/22, at 204.

Ms. Myers was re-called to the witness stand, and she testified she visited Parents’ home five days earlier, on April 13, 2022, observed no safety issues, and had no concerns with visitation being held in the home. N.T., 4/18/22, at 130, 133-34. There was a strong odor of bleach on the first floor, and Mother stated she had cleaned the kitchen. **Id.** at 131. On the second floor, there was a smell of a litter box, but it was “not overpowering,” and on the third floor, she could smell cat food. **Id.** Ms. Myers did not notice any pet

feces or urine, aside from the litter box, and there was a puppy pad, which was not saturated in urine or feces. **Id.** at 132-33. The bathroom had a new sink, with running hot and cold water. **Id.** at 132. Finally, Ms. Myers stated both Parents were currently receiving mental health treatment from True North, and she opined Parents did not need “new advocacy services.” **Id.** at 136-37.

Finally, I review Parents’ testimony. Father stated he has been working for one month as full-time as a flooring subcontractor. N.T., 4/18/22, at 95. Prior to that, he worked one month at Wolfgang Candies through a temp agency. **Id.** at 96-97. Before that, Father worked as a subcontractor for a fence company for almost one year. **Id.** at 97. He stated that over the past year, there were only a few days or a week that he did not work. **Id.** at 97. In November of 2021, their electricity was turned off, but Mother made a \$90 payment and it was turned on within 20 minutes. **Id.** at 163.

Both Parents testified they had mental health treatment through True North, and they did not know they were discharged until the first termination hearing on April 1, 2022. N.T., 4/18/22, at 99, 113, 152-53. They were discharged due to not completing insurance paperwork that was required every 30 days. **Id.** at 100, 153. Father had an appointment with True North the following day, and Mother was treating with them monthly for four months, and did not miss any appointments. **Id.** at 99, 153-54.

With respect to their home, Father testified the prior bathroom sink was old, and he made an agreement with the landlord to replace the sink in exchange for a credit toward the rent. N.T., 4/18/22, at 111, 122-23. They lacked an operable bathroom sink for approximately one month. *Id.* at 111. They used puppy pads inside the house for a dog who has a disabled leg, but this dog also relieves itself outside. *Id.* at 110.

Father stated he loved and missed the Children, and he had good relationships with them. N.T., 4/18/22, at 101-02, 104. Mother similarly testified she had good relationships with each Child. *Id.* at 157-60. Both Parents stated they had a good relationship with each other. *Id.* at 119, 178. Upon questioning by B.W.'s legal counsel, both Parents agreed it was not appropriate to strike children out of frustration or use "implementations" when disciplining Children. *Id.* at 116-17, 176. Mother, however, denied she or Father have ever inappropriately disciplined the Children. *Id.* at 180. Both Parents stated they attended the Children's medical appointments when they were able to. *Id.* at 106, 165. A.A. was born with a club foot, and Mother attended his foot appointments. *Id.* at 165.

At the end of the second day of hearings, the orphans' court terminated both Parents' parental rights to all five Children. N.T., 4/18/22, at 203. In support, the court cited the physical abuse, the Children's safety, and Parents' refusal to admit wrongdoing. *Id.*

V. Standard of Review

I incorporate the Majority's discussion of the applicable standard of review. I reiterate that the party seeking termination bears the burden to establish statutory grounds for termination with clear and convincing evidence. **See *In re N.C.***, 763 A.2d 913, 917-18 (Pa. Super. 2000).

The standard of clear and convincing evidence is defined as testimony that is so "clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitance, of the truth of the precise facts in issue." It is well established that a court must examine the individual circumstances of each and every case and consider all explanations offered by the parent to determine if the evidence in light of the totality of the circumstances clearly warrants termination.

In re R.N.J., 985 A.2d 273, 276 (Pa. Super. 2009) (citation omitted).

VI. Termination as to A.A. Under Subsection 2511(a)(5)

First, I consider Father's discussion that although CYF's petition sought termination under Subsections 2511(a)(1), (2), (5), and (8) (and 2511(b)), the orphans' court analysis discussed (5) and (8) (and (b)) only. **See** Father's Brief at 31. At the termination hearing, Father's counsel asked the court to specify the Section 2511(a) subsections under which it was entering termination.¹⁰ The court merely replied, "I think you should address the sections that [CYF] put in the petitions." N.T., 4/18/22, at 205. In its opinion, while the orphans' court quoted the text of Subsections 2511(a)(1), (2), (5),

¹⁰ **See** N.T., 4/18/22, at 204 (Father's counsel asking, "[F]or purposes of appeal . . . are you going to specifically say under which subsection so that we can address that?").

(8), and (b), its analysis addressed only Subsections (5) and (8). **See** Trial Ct. Op., 6/17/22 at 4-5, 30 (“The Court finds that [CYF] has carried its burden under 23 Pa.C.S.A. § 2511(a)(5) and (8).”). In light of this discussion, I would construe that termination was premised on these only these latter subsections — 2511(a)(5) and (8) (and (b)).¹¹ **See** Father’s Brief at 31.

Subsections 2511(a)(5) and (8) provide:

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

* * *

(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.

¹¹ Nevertheless, Father additionally addressed Subsections 2511(a)(1) and (2), in order to avoid waiver of any issues. Father’s Brief at 31-43.

23 Pa.C.S. § 2511(a)(5), (8).

First, Subsection (a)(5) includes the removal of the child “from the care of the parent” for at least six months. **See** 23 Pa.C.S. § 2511(a)(5). Here, A.A. was never in Father’s care. A.A. was born with drug withdrawal symptoms, stayed at the hospital for nine days, and was adjudicated dependent at 13 days old. **See** Order of Adjudication & Disposition for A.A., 7/12/21, at 1. Caseworker Marshall testified he has “always been outside the care and custody of his parents.” N.T., 4/11/22, at 213. **See** Trial Ct. Op., 6/17/22, at 38 (“A.A. has been dependent since birth.”). Thus, under the plain meaning of the statute, I would conclude termination of Father’s rights as to A.A. under Subsection 2511(a)(5) was mistaken.¹² **See** 23 Pa.C.S. § 2511(a)(5), (8). On this ground, I would reverse the termination order as to Father’s parental rights to A.A.

VII. Termination Under Subsections 2511(a)(5) & (8)

With respect to termination of the Father’s parental rights as to the older four Children under Subsections 2511(a)(5) and (8), I incorporate the Majority’s summary of Father’s arguments on appeal.

¹² Furthermore, CYF’s termination petition as to A.A. cited only Subsections 2511(a)(1), (2), and (5) — and not (a)(8). **See also In re Adoption of C.L.G.**, 956 A.2d 999, 1006 (Pa. Super. 2008) (*en banc*) (applying Subsection 2511(a)(8) where child tested positive for cocaine at birth and was removed from mother’s care at four days old).

First, I observe the trial court commended Father's successful drug treatment. Trial Ct. Op., 6/6/22, at 15 (considering "the amazing news" that Father was weaned completely off Methadone). However, the court denied that Parents' substance abuse was the sole basis for removal of the Children, and maintains that instead, "from the beginning," major concerns included whether Parents had a safe home environment and financial stability to care for five small children. **See id.** at 7. The court stated a "pattern" emerged, in which Parents were doing well with drug testing, but did not have a suitable home environment and refused to submit financial documentation to CYF. **Id.**

With respect to Parents' housing, the orphans' court cited evidence presented at the: (1) February 10, 2021, permanency review hearing, that there was dog feces on the floor, and R.A. and Mother had lice; (2) August 5, 2021, permanency review hearing, that Catholic Charities reported the home appeared appropriate at times, but at other times there was extreme clutter, bugs, smells, and trash; and (3) January 11, 2022, permanency review hearing, that Ms. Myers only observed the living room and did not inspect the rest of the home at Parents' request.¹³ Trial Ct. Op., 6/17/22, at 11, 16, 19-20.

¹³ The orphans' court cited, however, Parents' reason for requesting Ms. Myers to not inspect the other rooms: Parents were packing and planning to move "because the landlord was not being cooperative." Trial Ct. Op., 6/17/22, at 20.

I emphasize, however, that the orphans' court did not address — either positively or negatively — the extensive, consistent testimony given by the Pressley Ridge witnesses that the home was safe and appropriate. I reiterate that at the November 10, 2021, status review hearing, Ms. Myers testified Parents' five-bedroom apartment was appropriate and Parents were resolving the issue of the bedroom ceiling with their landlord. N.T., 11/10/21, at 23. At the January 11, 2022, permanency review hearing, Ms. Luciano testified that: one day earlier, she inspected Parents' living room, kitchen, and the Children's proposed bedrooms; the ceiling was repaired and required only finishing and painting; and **her services should come to an end because Parents achieved the goal of having appropriate housing.** N.T., 1/11/22, at 23-25, 30-31.

At the April 1, 2022, termination hearing, Ms. Myers stated: she visited Parents' home five days earlier; she did not observe any pet feces or urine, aside from a litter box that merely needed changing; there was a working sink in the bathroom; and she had no concerns with safety issues nor with visitation being held in the home. N.T. 4/18/22, at 130-34.

It is clear that in a termination appeal, we accept the orphans' court's credibility determinations if they are supported by the record. **See In re D.L.B.**, 166 A.3d at 325-26. Here, the Majority holds the court's credibility findings — crediting the testimony of Caseworker Marshall — is supported by the record. **See** Maj. Memo. at 13. However, in my view, in addressing

Parents' housing goals, the orphans' court did not address at all the testimony by the Pressley Ridge witnesses, including Ms. Luciano's statement, three months earlier, that Parents have met their goal of appropriate housing, to the extent she suggested her services come to a successful end. **See** N.T., 1/11/22, at 25. Given the lack of any discussion of the above testimony, which came later in time than the initial observations cited in the orphans' court's opinion, I cannot agree that the housing conditions, which led to Children's removal, continued to exist. **See** 23 Pa.C.S. § 2511(a)(5), (b).

Next, I review the orphans' court's finding that Parents have failed to provide proper documentation "that would help to present a clear picture of financial stability." **See** Trial Ct. Op., 6/17/22, at 21. The court's opinion properly cited Caseworker Marshall's testimony, as well as CYF supervisor Ms. Rose's testimony, over several hearings, that Parents either failed to present any proof of employment, or provided handwritten notes that were not sufficient. **See id.** at 13, 16, 21. The court also acknowledged Ms. Luciano's testimony, at the January 11, 2022, hearing, that she accepted bank statements, with some entries covered in black marker, as sufficient proof of employment. **Id.** at 21-22. At the termination hearing, both Parents testified as to their current employment and most recent employment. **See** N.T., 4/18/22, at 148-49.

I acknowledge CYF's evidence that Parents failed to consistently provide proof of income that was acceptable to the agency. I agree with the orphans'

court's concern that Parents must comply with CYF's request to provide authentic and reliable financial documentation. Nevertheless, in light of the evidence that Parents have successfully met their drug treatment, housing, and parenting goals, I would decline to affirm the termination of Father's parental rights on the ground he failed to provide proper financial documentation. I am mindful that "the right to make decisions concerning the care, custody, and control of one's children is one of the oldest fundamental rights" protected by our Constitution. **See K.W.**, 157 A.3d at 502-03. **See also In re Bowman**, 647 A.2d 217, 218-19 (Pa. Super. 1994) ("The complete and irrevocable termination of parental rights is one of the most serious and severe steps a court can take, carrying with it great emotional impact for the parent and the children."). I thus disagree there was clear and convincing evidence that Father cannot or will not remedy his financial instability, or that financial stability continues to exist. **See** 23 Pa.C.S. § 2511(a)(5), (8).

Next, I consider the orphans' court's finding — stated at the termination hearing in support of termination — that Parents have failed to take responsibility for the physical abuse of the Children. N.T., 4/18/22, at 203. The court's opinion also cited a Justice Works Discharge Report, which noted Mother did "not take accountability for the impact her substance abuse has had on her [C]hildren. [Mother] denies the [C]hildren experiencing trauma despite being removed from the home after witnessing [her] overdosing in the

home.” Trial Ct. Op., 6/17/22, at 27. I do not minimize the findings of abuse made against both Parents, for the abuse that occurred prior to the Children’s removal in August of 2020. However, I also consider that the orphans’ court has not meaningfully addressed the extensive testimony by Pressley Ridge witnesses that Father has since made great progress in his parenting skills and that visits were going very well.

Both Parents met weekly with family therapist Ms. Myers. N.T., 4/1/22, at 75, 87. Five months before termination was entered, Ms. Mahoney, CYF supervisor Karen Rose, and the GAL all agreed with a recommendation to increase visitation and move visits into the community. **See** N.T., 11/10/21, at 53, 59-60, 64. At the termination hearing, Ms. Mahoney testified she would feel comfortable with unsupervised visits despite the ongoing abuse investigation, noting such visits were not permitted because of the investigation. N.T., 4/1/22, at 62, 68. Ms. Mahoney also only opposed visits in the home at that time because the goal was not currently reunification. **Id.** at 73. Finally, Ms. Myers likewise testified she would agree with partially supervised visits. **Id.** at 107-08.

In its opinion, the orphans’ court considered that the service providers “did not recommend a move to partial supervised visits **until recently,**” after the four older Children have been adjudicated dependent for 20 months. **See** Trial Ct. Op., 6/17/22, at 10, 43 (emphasis added). However, the court does not explain why these **current** recommendations militate against

reunification, nor why they should be disregarded solely due to the length of time passed. In the absence of such discussion, I would decline to affirm the termination orders on the ground of Father's parenting skills.

In light of all the foregoing, I would disagree with the orphans' court's conclusion there was clear and convincing evidence supporting termination. **See *In re N.C.***, 763 A.2d at 917-18. "Clear and convincing" evidence is evidence that is so "clear, direct, weighty and convincing as to enable the [trial court] to come to a clear conviction, without hesitation, of the truth of the precise facts in issue." **See *In re R.N.J.***, 985 A.2d at 276. I would thus reverse the orphans' court's termination of Father's parental rights as to the four older children, B.W., Ed.A., R.A., and El.A., under Subsections 2511(a)(5) and (8).

VIII. Termination Under Subsection 2511(b)

Having determined that termination was improper under Subsection 2511(a), I would not reach the merits of termination under Subsection 2511(b). **See *In re L.M.***, 923 A.2d at 511 (termination under Section 2511 requires a bifurcated analysis, and only if the court determines the parent's conduct warrants termination does the court engage in the second part of the analysis pursuant to Section 2511(b)). **See also** Father's Brief at 45-47 (addressing Subsection 2511(b)). Nevertheless, I would opine the orphans' court likewise failed to address the testimony summarized above, by the multiple Pressley Ridge witnesses, about the bonds between the Children and

Father. Caseworker Marshall likewise acknowledged there is a bond. While she also offered her opinion that termination would have no long-term, negative impact on any of the Children, I emphasize she observed only one visit prior to the filing of the termination petition (10 months before the filing).

See N.T., 4/1/18, at 238-39; N.T., 4/18/22, at 25-26.

IX. Claim of Bias Against Caseworker Marshall

Father also raises a claim concerning Caseworker Marshall's bias:

[T]he issues with [Caseworker] Marshall far exceed the standard issues between caseworker and parent and these issues were presented to the Court through testimony. A review of past hearings in this case show that when Ms. Marshall was present for the hearing, the hearing had a negative tone. When she was not present, the hearings were positive.

Father's Brief at 48-49.

The orphans' court addressed this claim of bias, and properly pointed out it was the court's purview to weigh the witnesses' testimony and credibility. **See *In re D.L.B.***, 166 A.3d at 325-26; Trial Ct. Op., 6/17/22, at 39. In light of my discussion above, that reversal of the termination orders would be appropriate, I would not reach the merits of this claim. Nevertheless, I emphasize my rationale is not that the orphans' court should not have believed Caseworker Marshall, but rather than the court failed to address the testimony of the Pressley Ridge and other agency witnesses.

X. Conclusion

For the foregoing reasons, I would reverse the orders involuntarily terminating Father's parental rights to his five Children, B.W., Ed.A., R.A., El.A., and A.A.