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OPINIONS

ALLEGHENY COUNTY COURT OF COMMON PLEAS

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Opinions

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TERENCE ODEN, MARYLINN MAIONE, and NAN MCDERMOTT, Plaintiffs, vs. JEROME M. SCHMITT, Defendants

Unimproved portion of land

Court examines issues related to unimproved portion of land.

Case No.: GD-21-1073. 1073 WDA 2023. In the Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. Hertzberg, J. November 3, 2023.

OPINION

BACKGROUND

As residential development happened in the 1920s in the Highland Park neighborhood of Pittsburgh, the final 96 feet of Wellesley Avenue in the Wellesley Road Plan of Lots was not constructed. Defendants Jerome Schmitt and Mohini Wagle-Schmitt ("the Schmitts") purchased a residence on the land abutting this unimproved portion of Wellesley Avenue in 1989. Plaintiffs Terence Oden, MaryLinn Maione and Nan McDermott have mailing addresses on nearby Jackson Street. But, they have no vehicular access from Jackson Street to their residences since their front yards are comprised of a steep hill. To have pedestrian access from Jackson Street, the Plaintiffs must climb 35 stairsteps. Around 2007 the Plaintiffs were using the unimproved portion of Wellesley Avenue for vehicular access to the rear of their properties when a dispute began with the Schmitts concerning obstruction of the Plaintiffs' access. The Schmitts believed that Pennsylvania legislation from the year 1889 (see 36 P.S. §1961) and Appeal of Gaus (531 Pa. 133, 611 A.2d 696 (1992)) made them the owners of the half of the unimproved portion of Wellesley Avenue abutting their land. Hence, in November of 2019 they recorded a deed from themselves to themselves with a metes and bounds description from a survey of that land. Allegheny County's Department of Real Estate designated this portion of the "paper street" as block and lot 124-A-229 with tax bills thereafter issued to the Schmitts for the land.

Mr. Oden, Ms. Maione and Ms. McDermott began this lawsuit in 2021 by filing a complaint against the Schmitts and Allegheny County seeking ejectment of the Schmitts from Wellesley Avenue and for Allegheny County to nullify the deed to Wellesley Avenue recorded by the Schmitts. On May 19, 2022 I presided over the non-jury trial of the dispute. The trial transcript was prepared and the parties submitted briefs supporting their respective positions. My July 10, 2023 verdict determined that the Plaintiffs own a right-of-way from the improved portion of Wellesley Avenue to the rear of their Jackson Street properties, as shown on a City of Pittsburgh Department of Public Works drawing. My verdict also affirmed the Schmitts' ownership of half of the unimproved portion of Wellesley Avenue, but ordered the Schmitts to remove encroachments that extended outside its boundaries and obstructed Plaintiffs' right-of-way. The Schmitts filed a motion for post-trial relief, which I granted in part by adding clarifying language to my verdict. Then, on the same day, the Schmitts and the Plaintiffs timely filed notices of appeal to the Superior Court of Pennsylvania, and they later also filed concise statements of the errors complained of on appeal. Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a), the balance of this opinion addresses the errors I allegedly made, beginning with the Plaintiffs' allegations of error.

ERRORS ALLEGED BY PLAINTIFFS

The Plaintiffs contend I made an error by ruling the Schmitts own a portion of the "paper street" because there was substantial evidence it "was used" within 21 years after the Wellesley Road Plan of Lots was created. I will explain why this contention is meritless. The Plaintiffs argument is premised on Pennsylvania street legislation at 36 P.S. §1961 entitled "Unopened ways or streets on town plots," which states:

> Any street, lane or alley, laid out by any person or persons in any village or town plot or plan of lots, on lands owned by such person or persons in case the same has not been opened to, or used by, the public for twenty-one years next after the laying out of the same, shall be and have no force and effect and shall not be opened, without the consent of the owner or owners of the land on which the same has been, or shall be, laid out.

Thus, it is not a question of whether block and lot 124-A-229 "was used" within 21 years after being laid out, but instead whether it was used by "the public." There was no evidence it was used by the public, with the Plaintiffs testifying it becomes too steep for use as a public road to Jackson Street. See Transcript of Proceedings, May 19, 2023 ("T" hereafter), p. 189. Evidence of use of the land in 1939 for access by Plaintiffs' predecessors in title is not sufficient to deem it an opened portion of Wellesley Avenue as they do not constitute "the public." Hence, I correctly ruled the Schmitts own block and lot 124-A-229.[1]

The Plaintiffs' only other contention is that I made an error because the title to lot 124-A-229 would revert back to its original owner, rather than the Schmitts. This contention also is meritless because nearly seventy years ago the Supreme Court of Pennsylvania ruled that title to streets not improved or opened for use by the public for twenty-one years does not revert back to its original owner. See Rahn v. Hess, 378 Pa. 264, 106 A.2d 461 (1954). The title instead reverts "to the abutting lot owners." Id., 378 Pa. 264, 269, 106 A.2d 461, 464. Since the Schmitts own a lot abutting some of the unimproved portion of Wellesley Avenue, I correctly ruled that half of it reverted to them.

ERRORS ALLEGED BY SCHMITTS

The Schmitts allegations of errors I made consists of twenty-three subparagraphs. See Schmitt defendants concise statement of the errors complained of filed 9/29/2023 ("Concise Statement" herein). I will address these alleged errors[2] in a sequence that differs slightly from the Concise Statement, as I believe it will make my rulings easier to understand. The sequence I will follow addresses Concise Statement subparagraphs 2a.-2e., 3a.-3d. and 4a.-4g. before subparagraphs 1a.-1g. are addressed.

The Schmitts contend I made an error by finding the Plaintiffs own the right-of-way shown on the City of Pittsburgh Department of Public Works drawing admitted as exhibit 42. See Concise Statement ¶s 2a.-2e. The Schmitts admit the existence of a prescriptive easement across the northwesterly portion of lot 124-A-229 for approximately 48 feet for the benefit of lot owners to the north on Winterton Street. See T, pp. 211 and 215. The Schmitts deny this right-of-way is for the benefit of the Plaintiffs or that it continues an additional approximately 75 feet to the Plaintiffs' properties. I ruled that the Plaintiffs own the right-of-way from the unimproved portion of Wellesley Avenue to their properties because the Plaintiffs established an easement by

prescription over the Wellesley Avenue "paper street." This is similar to the ruling by the Pennsylvania Superior Court in Brouse v. Hauck. 330 Pa. Super 58, 478 A.2d 1348 (1984) (holding that evidence, if believed, showed prescriptive easement over vacated township road).

The Schmitts also contend there is no evidence from the 1920s or 1930s as to where the right-of-way existed. However, a prescriptive easement requires only twenty-one years of adverse, open, continuous, notorious and uninterrupted use of the land. See Matakitis v. Woodmansee, 446 Pa. Super 433 at 440, 667 A.2d 228 at 231 (1995). There actually is evidence that the right-of-way existed in 1939. See exhibit 32 and T, p. 129. Hence, far more than twenty-one years of use were established, and therefore I made no error.

The Schmitts also contend that, by referencing the Department of Public Works drawing (exhibit 42) created at the behest of plaintiff Oden, I put my stamp of approval on a right-of-way that he created. First, I only referred to exhibit 42 because it shows all three Plaintiffs' lots, two additional Jackson Street lots to the north, the Winterton Street lots as well as the right-of-way. Exhibit 42 contains no significant deviations from the 2019 survey obtained by the Schmitts that was admitted into evidence as exhibit 16, with both showing the right-of-way in similar locations and indicating the Schmitts' fence extends beyond the boundaries of lot 124-A-229. Second, plaintiff Oden, an architect for 30 years, credibly testified that the gravel driveway that he installed followed the pathway or roadway that was in existence. See T, pp. 49—51, 53 and 85. Therefore, plaintiff Oden did not "create" the right-of-way and there was no error by me in referencing the location of it shown by exhibit 42.

The Schmitts also contend exhibit 42 is an unofficial sketch that is of no material significance. Oddly, in the concise statement the Schmitts do not object to admission of exhibit 42 into evidence and at trial their objection, which I ultimately overruled, was never given any basis, such as hearsay or relevance. See T, pp. 21-27 and 40-44. In any event, the Plaintiffs established admissibility under the hearsay exception for Records of Regularly Conducted Activity (see Pa. R.E. 803(6)), and exhibit 43 is relevant because it shows the location of the right-of-way and the surrounding lot ownership. Plaintiff Oden credibly testified that exhibit 42 is an accurate depiction and layout. See T, p. 53. Since I find exhibit 42 is a business record of the City of Pittsburgh Department of Public Works that accurately depicts the right-of way, I made no error in referencing exhibit 42 for the location of the right-of-way.

The Schmitts next contend I made an error by finding the Plaintiffs were not trespassers on the vacant lot located to the north of their property. See Concise Statement, ¶s 3a.-3d. First they argue the Plaintiffs did not present any evidence of any privilege to enter this vacant land. However, there was extensive documentary evidence and testimony that clearly establishes the Plaintiffs' right to enter the land. A deed from 1930 in Plaintiff Oden's chain of title states that the right-of-way is "for the use and benefit of the property herein described and the two adjoining properties, for the purpose of ingress, egress and regress to and from Wellesley Avenue." Stipulation filed 5/22/2023, p. 3. There also is a 1956 survey of Plaintiff Oden's property he obtained when he purchased it which designates a "12' Right of Way to Wellesley Ave" and shows a garage near it on the adjacent lot now owned by Plaintiff Maione. Exhibit 17 (see testimony corroborating existence of garage at T, p. 186). Testimony by plaintiff Oden was that his predecessor in title used the right-of-way for pedestrian access, and testimony by defendant Jerome Schmitt was that Plaintiff Maione's children also used it for pedestrian access.[3] T, pp. 71 and 210. There also was Plaintiff Oden's testimony concerning his observation of an existing pathway or roadway. See T, pp. 49-51, 53 and 85. Collectively, this documentary evidence and testimony demonstrates the continuity, since the year 1930, of the prescriptive easement by showing "a settled course of conduct indicating an attitude of mind on the part of the user or users that the use is the exercise of a property right." Keefer v. Jones, 467 Pa. 544, 548, 359 A.2d 735, 737 (1976). The Plaintiffs' easement by prescription provided them the right and privilege to enter the vacant lot located to the north of their property, and therefore I made no error in finding they are not trespassers.

The Schmitts also contend the Plaintiffs have no property right in the vacant lot that entitles them to sue someone for trespassing on it. Assuming the Schmitts are referring to Plaintiffs' request to remove the encroachments from the right-of-way, the Schmitts are incorrect as an encroachment that significantly interferes with a right-of-way does justify its removal. See Big Bass Lake Community Ass'n v. Warren, 950 A.2d 1137 at 1147 (Cmwlth. Ct. 2008). Thus, I correctly permitted the Plaintiffs to sue for removal of encroachments that significantly interfered with their right-of-way.

The Schmitts also contend the Plaintiffs cannot complain that the Schmitts' neighbors are trespassing on the Schmitts' property. Assuming this is a reference to the prescriptive easement across the northwesterly portion of lot 124-A-229 that is used by the lot owners to the north on Winterton Street (as well as Plaintiffs), the Schmitts misstate the Plaintiffs' complaints. The Plaintiffs "have a shared support with them, both in financing of that road, whether it is feeding the Winterton portion or feeding the rear of our home." T, p. 86. Because the Plaintiffs do not complain of the Winterton Street lot owners trespassing on the Schmitts' property, I made no error.

The Schmitts also contend I made an error since plaintiffs Maione and McDermott allegedly did not use the right-of-way until Plaintiff Oden moved into the neighborhood in 2006.[4] With respect to plaintiff Maione, the allegation is untrue, with defendant Jerome Schmitt acknowledging her children used the right-of-way when they moved in during 1994. See T, p. 210 and Stipulation filed 5/22/2023, ¶ 3b. The Plaintiffs' predecessors use of the easement or right-of-way also is relevant (see Keefer v Jones, above), and there was such evidence relative to both plaintiff Oden's and plaintiff Maione's predecessors in title. See T, pp. 71 and 186. The requirement that use of an easement by prescription be continuous is not a requirement that it be constant, and gaps in periods of use that do not involve an obstruction placed with the intent to interrupt use do not negate an easement by prescription. See Keefer v Jones, above. Therefore, a gap in use by Ms. McDermott is not an error in my ruling.

The Schmitts next contend I made an error by requiring them to remove encroachments in the right-of-way. They argue that the encroachments, consisting of a wooden privacy fence, wall and dirt mound, are not located on property owned by the Plaintiffs. While it is true that Plaintiffs do not own fee simple interests where the fence and wall encroach[5], their ownership in the right-of-way entitles them to have encroachments removed that significantly interfere with its use. See Big Bass Lake Community Ass'n v. Warren, above. The Plaintiffs provided extensive credible testimony on how the encroachments significantly interfered with their use of the right-of-way. See T, pp. 53-55, 60-64, 68-70, 173-177 and 181-182. Because the encroachments significantly interfere with the use of the right-of-way owned by the Plaintiffs, I correctly ordered their removal.

The Schmitts also contend that there are innumerable obstructions within legal rights-of-way, such as mailboxes. However, the difference is that the encroachments from the Schmitts' lot significantly interfere with the use of the Plaintiffs' right-of-way. That is not the case with mailboxes that may be within a legal right-of-way, but outside the "cartpath" or the sidewalk.

The Schmitts also contend that I made an error by shifting the cost of the Plaintiffs' driveway to the Schmitts. They argue

my order requires them "to spend tens of thousands of dollars" when the Plaintiffs could resolve the problem by spending "a few dollars to take down a tree…." Concise statement, ¶ 4e. I disagree. First, the encroachments result solely from the conduct of the Schmitts. The testimony I find credible is that the Schmitts moved a part of the right-of-way to the north to enlarge their side yard and placed the fence beyond the boundary of lot 124-A-229 to accommodate the enlargement. See, pp. 186-187. Additionally, Defendant Jerome Schmitt admitted that he created the dirt mound encroachment. See T, pp. 203-204. Second, there was no evidence that removal of the encroachments would cost the Schmitts "ten of thousands of dollars" or that the Plaintiffs just need to spend "a few dollars to take down a tree." However, there was credible testimony by Plaintiff Oden, an architect, that permits, dirt fill, a retaining wall and the removal of trees will be required by the topography for the work the Schmitts suggest the Plaintiffs should do. See T, p. 94-97. But, defendant Jerome Schmitt acknowledged that removing the dirt mound and widening the driveway in the direction of the mound is the simpler solution. See T, p. 208. Hence, the costs of the Plaintiffs driveway were not shifted to the Schmitts, and I made no error.

The Schmitts also contend the obstructions are minimal since a photograph introduced into evidence by the Plaintiffs shows "a huge tree removal truck located at the place where they say passage is pinched…." Concise Statement, ¶s 4f. and 4g. However, the tree removal truck is not "huge" (see exhibit 27), and there was credible testimony that this access, as well as contractor operations, are made very difficult by the narrowness of the right-of-way there. See T, pp. 64-66 and 173-174. Therefore, the obstructions are not minimal.

Finally, the Schmitts contend I made an error by determining the Plaintiffs had standing to sue. However, I previously addressed their arguments in support of this contention in Concise Statement paragraphs 1a. to 1d. and explained why none of the arguments have merit. The first argument remaining to be addressed is that the Statute of Frauds requires interests in real estate to be proven by a written document. This argument most likely is waived due to its exclusion from the Schmitts' motion for post-trial relief. In any event, written documents, including a deed in Plaintiff Oden's chain-of-title, previously described, overcome any valid Statute of Frauds defense. Finally, the Statute of Frauds, by the definition of an easement by prescription previously mentioned, does not apply to an easement by prescription. Hence, the Schmitts argument under the Statute of Frauds is meritless.

Last, the Schmitts contend that the Plaintiffs' right-of-way is not shown on a City of Pittsburgh street map marked exhibit 40 and the City of Pittsburgh records do not show that Wellesley Avenue exists there. The City's records, however, are not relevant to my ruling as I did not rule the right-of-way is public. Instead, my ruling is that the Plaintiffs own a right-of-way, making it private and inappropriate for a City street map or records of public streets. Hence, this last contention also is meritless.

BY THE COURT:
/s/The Hon. Alan Hertzberg

[1]This Schmitts ownership, however, is subject to the private easement rights of the other lot owners in the Wellesley Road Plan of Lots. See Drusedum v. Guernaccini, 251 Pa. Super 504, 380 A.2d 894 (1977). The Plaintiffs did not raise this issue, but none of the Plaintiffs own lots in the Wellesley Road Plan of Lots.

[2]Some of the subparagraphs in the Concise Statement do not allege any error by me, but instead are statements of facts as perceived by the Schmitts and/or their counsel. I will only address those subparagraphs I understand to allege an error by me.

[3]The existence of a garage by 1956 is circumstantial evidence the right-of-way historically was used by motor vehicles. But, such evidence is unnecessary as changes in use that are foreseeable at the time of establishment of a prescriptive easement are permitted. See Hash v. Sofinowski, 337 Pa. Super. 451, 487 A.2d 32 (1985).

[4]The Schmitts incorrectly state in the Concise Statement that Plaintiff Oden moved into the neighborhood in 2008 (see ¶3d.), but they stipulated the year was 2006. See stipulation filed 5/22/2023, ¶ 3a.

[5]The dirt mound encroachment is on the half of the unopened portion of Wellesley Avenue abutting plaintiff Maione's land. See Exhibit 42. Plaintiff Maione, therefore, has the identical ownership interest in the land where the dirt mound is located that the Schmitts have in lot 124-A-229. This is additional legal authority for my order requiring removal of the dirt mound.

TRI-COG LAND BANK, PETITIONER v. MARY HART, RESPONDENT

Pennsylvania Abandoned and Blighted Property Conservatorship Act

This is a proceeding under the Pennsylvania Abandoned and Blighted Property Conservatorship Act.

Case No.: CS-23-000021. Superior Court docket no. 1051 WDA 2023. In the Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. Hertzberg, J. November 6, 2023.

OPINION

This is a proceeding under the Pennsylvania Abandoned and Blighted Property Conservatorship Act. See 68 P.S. SSI 101-1120. The subject property is a residential dwelling owned by respondent Mary Hart that is located in Edgewood Borough and known as 147 Washington Street, Pittsburgh, PA 15218. Following an evidentiary hearing, on August 10, 2023 1 determined the dwelling meets the conditions for a conservatorship to be imposed, but I granted Ms. Hart conditional relief that allowed her to sell the property, demolish the dwelling or undertake its rehabilitation. Sgg 68 P.S. and (f). I ordered Ms. Hart to post a bond in the amount of $43,000 by August 23, 2023 or, upon motion of petitioner Tri-COG Land Bank, it would be appointed conservator. When no bond was filed by August 23, 2023, Tri-COG filed a motion to appoint it as the conservator. I granted Tri-COG's motion on August 28, 2023 and appointed it conservator of the property.

Ms. Hart has filed two notices of appeal to the Superior Court of Pennsylvania. The first appeal is from my August 10, 2023 orders that found the dwelling meets the conditions for a conservatorship and granted her conditional relief. The second appeal is from my August 28, 2023 order appointing Tri-COG as conservator of the property. Ms. Hart filed a concise statement of the errors complained of on appeal that I will address pursuant to Pennsylvania Rule of Appellate Procedure 1925(a).

Ms. Hart's first contention is that I made an error by accepting as true, without proof, two different conservatorship petitions filed in bad faith by Tri-COG. This alleged error is meritless. The first petition, field at GD21-1233 on February 12, 2021, differs only slightly from the petition in this proceeding. In the first petition, Tri-COG proposes rehabilitation of the dwelling for a preliminary cost estimate of $116,735 while the petition in this proceeding proposes demolition of the dwelling for a cost of $45,000. Tri-COG explained that this proceeding was filed after GD21-1233 "seemingly was lost in transition" following retirement of the Honorable Judge Donald Walko and COVID-19 court closures. Transcript, August 9, 2023, Petition for the Appointment of a Conservator ("T" hereafter), p. 13. During the evidentiary hearing that I presided over, there was absolutely no evidence of any bad faith by Tri-COG in filing either petition. Tri-COG instead presented overwhelming evidence of massive problems with the dwelling. For example, there was visible damage to the structural elements of the roof, large holes in the roof and collapse of the interior second floor likely as a result of water penetration via the roof holes. S_gg exhibit 2, photographs. Ms. Hart did not dispute the existence of the problems, stating "I'm horrified by how bad the house itself has gotten in the last year," and "the house is still falling apart." T, pp. 63 and 71. Since Tri-COG did provide proof of the petitions and acted in good faith, I correctly accepted the petitions as true.

Ms. Hart's next contention is that I abused my discretion by finding the dwelling meets the conservatorship requirement that the dwelling be abandoned. In 2019 the Superior Court of Pennsylvania's published opinion in Scioli Turco Inc. v. Prioleau (2019 PA Super 98, 207 A.3d 346) provided an in-depth analysis on the meaning of the "not been legally occupied" requirement for an "abandoned property" finding. 68 P.S. 105 (d)(l) and 1103. Mr. Prioleau slept three nights per week in the Philadelphia building at issue that had a dilapidated exterior and a gutted interior. The Superior Court held that "occupy" means "to live or stay in (a place)" and therefore accepted the finding that Mr. Prioleau occupied the property. 207 A.3d 346 at 351-355. But, "legally occupied" 'will not allow the owner of a building that is sufficiently blighted to meet all the other requirements of 68 P.S. } 1105(d) "to indefinitely elude all possibility of the appointment of a conservator.. .simply by choosing to occupy the building for some amount of time each year." 207 A.3d 346, 353. "Not been legally occupied" instead means the building in question was not occupied in conformity with the laws regulating the right to occupancy. Id. Ms. Hart, however, was not sleeping in the dwelling that is the subject of this proceeding, making it unoccupied. Additionally, there was highly credible, unrebutted testimony as well as documentation that the dwelling had been condemned by an authorized representative of Edgewood Borough in 2015 and 2016 and is unfit for human occupancy. Sgg T, pp. 38-40 and exhibit 5. With Ms. Hart going to the property regularly to retrieve her mail and sometimes doing plant sales (sgg T, p. 75), even if she could also have been spending the nights inside the dwelling, it does not allow her to indefinitely elude a conservatorship when any "occupancy" by her clearly would not be "legal." Therefore, I did not abuse my discretion by finding Ms. Hart's dwelling was abandoned and not legally occupied.

Ms. Hart next contends that I abused my discretion by finding "the condition and vacancy of the building materially increase the risk of fire to the building and to adjacent properties." Department of Court Records electronic docket, Document 9, 8/10/2023 Order of Court, 2d. and 68 P.S. However, credible testimony supported my finding. See T pp. 28-29 and 43. Therefore, I correctly determined Ms. Hart's dwelling is a fire hazard.

Ms. Hart next contends that I abused my discretion by finding "the property is an attractive nuisance to children.. .." Department of Court Records electronic docket, Document 9, 8/10/2023 Order of Court ¶ 2e. and 68 P.S. But, this finding also is supported by credible testimony. Sgg T, pp. 29 and 43-44. Hence, I correctly determined Ms. Hart's dwelling is an attractive nuisance to children.

Ms. Hart next contends that I made an error by finding her dwelling is subject to unauthorized entry and attracts prostitutes, drugs and vagrants. But, I did not make either of those findings. Seg Department of Court Records electronic docket, Document 9, 8/10/2023 Order of Court. Thus, I could not have committed the error alleged.

Ms. Hart next contends that I made an error by finding the dwelling needs substantial rehabilitation and no rehabilitation has taken place during the previous 12 months. Ms. Hart, however, admitted this is true. See T, p. 79. Hence, my finding was correct.

Ms. Hart next contends that I abused my discretion by allegedly imposing a financial hardship on her. She alleges that I am taking the property from her to have it sold to a neighbor for $20,000 or $30,000 while she still must pay the $80,000 owed on a mortgage. I disagree. First, there is no agreement between Tri-COG and a neighbor to sell the property to the neighbor. S_gg T, p. 88. Second, any sale by Tri-COG has to be approved by this court (igg 68 P.S. S 1109), and my policy is to require an appraisal (sgg T, pp. 88-90) before a sale is approved. Tri-COG also requires an appraisal before a sale. Sgg T, p. 51. If the property is worth the $200,000 claimed by Ms. Hart (see T, p. 70), after payment of the delinquent property taxes and Tri-COG's expenses there will be sufficient funds to pay off the mortgage. Finally, even if the sale price is insufficient to pay off the mortgage, to collect the balance from Ms. Hart the lender would have to seek an in personam judgment against Ms. Hart, which would be unusual. Therefore, I did not abuse my discretion and impose a financial hardship on Ms. Hart.

Ms. Hart next contends that I made an error by failing to consider that taking the property from her is a violation of her constitutional rights. Ms. Hart, however, did not raise the issue of a constitutional violation during the evidentiary hearing, and now she fails to specify whether the alleged violation is under the Pennsylvania or United States Constitution and what provision under either constitution is allegedly being violated. In any event, by enacting the Abandoned and Blighted Property Conservatorship Act the Pennsylvania Legislature determined that the rights of neighbors of blighted buildings outweighs those of the owners of the blighted buildings. See 68 P.S. 51102(2) and (3). Therefore, I did not make an error by failing to consider Ms. Hart's constitutional rights.

Ms. Hart next contends I made an error in appointing Tri-COG as conservator because Tri-COG's goal, set forth in its literature, is to remove property from lower-income people and give it to higher-income people that will care for it better. The only literature related to Tri-COG that was admitted into evidence during the evidentiary hearing is a 9 page 2013 study by the Delta Development Group, Inc. entitled "Financial Impact of Blight on the Tri-COG Communities." Sgg exhibit 1. The study does not set forth a goal to remove property from lower income people and give it to higher income people. Instead, the study describes the high costs of blight and the benefits of repurposing blighted properties. There also was no testimony that Tri-COG has a goal of removing property from lower-income people and giving it to higher income people. Hence, I did not make an error by appointing Tri-COG as conservator.

Ms. Hart next contends that I made an error by failing to consider that she is current on her mortgage payments. However, the Abandoned and Blighted Property Conservatorship contains no requirement that I consider this. While I believe it has been difficult for Ms. Hart to keep current on the mortgage, doing so does not offset the impact that her dilapidated property has on the neighborhood. Thus, it was not an error to fail to consider that Ms. Hart is current on her mortgage payments.

Ms. Hart next contends that I abused my discretion by providing insufficient time to remove her personal property from the dwelling and the garage. Ms. Hart's desire to remove her personalty from the dwelling before demolition was not expressed until an evidentiary hearing on her emergency motion for temporary injunction held on September 8, 2023. Ms. Hart did not appeal from my September 8, 2023 order denying her motion or have the evidentiary hearing transcribed. Her allegations of an abuse of discretion by me are, therefore, unappealable. In any event, my handwritten notes from the hearing contain no reference to the garage, and I have no memory of it being mentioned during the hearing. My memory from the hearing, corroborated by my handwritten notes, is that, due to unsafe conditions inside the welling, Tri-COG and Ms. Hart agreed that she could reach in first floor windows and remove sentimental personalty from the dwelling the following week. Therefore, I did not abuse my discretion by providing insufficient time for Ms. Hart to remove her personalty from the garage and the dwelling.

Ms. Hart next contends that I abused my discretion by not considering that her mortgage holder hired a contractor to preserve the property and the contractor broke into the dwelling, damaged it and locked her out for months. Sgg T, pp. 58-62 for Ms. Hart's description of the conduct of mortgage holders and their contractors. However, Edgewood Borough concerns over the condition of Ms. Hart's property date back to 2009 (sgg exhibits 3 and 6), while Ms. Hart's mortgage payment delinquency began in 2013. Hence, mortgage holders hiring a contractor to preserve their collateral when payments became delinquent makes sense. This leads me to question the accuracy of Ms. Hart's version, with the police refusing to help and her providing no evidence to support the story but her own self-serving testimony. I did, however, consider the possibility that her story could be accurate, but decided that her failure to take any significant action to rehabilitate the dwelling for at least four years afterwards (sgg T, p. 77) made the property appropriate for a conservatorship. Even though Ms. Hart's failure to rehabilitate her dwelling is inconsiderate of its negative impact on the neighborhood, I did exercise discretion in her favor when I ruled against appointing a conservator on August 10, 2023 and granted her request for conditional relief. 68 P.S. 1 105(f), however, provides for no discretion by mandating "a bond in the amount of the repair costs...as a condition to retaining possession of the building." Therefore, I did not abuse my discretion.

Last, Ms. Hart contends that I made an error by not placing a deadline in my August 10, 2023 order that granted her conditional relief from the conservatorship. This contention, however, is meritless. Paragraph 2 of my order states "Ms. Hart shall, by August 23, 2023, post a board...." And paragraph 8 states "if Ms. Hart fails to timely perform her obligations under paragraphs 2, 4, 5, 6 or 7, upon motion by the Petitioner, I will grant its request to be appointed Conservator...." Thus, I placed a deadline of August 23, 2023 in the order and did not make an error. In any event, Ms. Hart was made aware during the evidentiary hearing that the bond could need to be filed within two weeks and the reasons for such a timeframe. Sgg T, pp. 95-101.

BY THE COURT:
/s/The Hon. Alan Hertzberg

IN THE INTEREST OF E.D.G., Minor Child. APPEAL OF: L.U., Mother.

Termination of parental rights

Mother appeals the orphans' court's decision to involuntarily terminate her parental rights.

Case No.: CP-02-AP-00166-2022. Superior Court docket no. 1142 WDA 2023. In the Court of Common Pleas of Allegheny County, Pennsylvania. Orphan's Court Division. Bush, J. November 27, 2023.

OPINION

On August 21, 2023, after a hearing held on August 11, 2023, this Court issued an order terminating the parental rights of L.U. ("Mother"), and J.G. ("Father") to child, E.D.G. ("Child").[1] The Court found that grounds existed to terminate Mother's parental rights pursuant to 23 Pa. C.S. §§ 2511(a)(2) and (a)(8), and Father's parental rights pursuant to 23 Pa. C.S. §§ 2511(a)(1) and (a)(2). The Court then concluded that terminating Parents' parental rights served the Child's needs and welfare pursuant to 23 Pa. C.S. § 2511(b). Mother timely appealed the Court's order on September 19, 2023 alleging two errors.[2] First, Mother asserts that the Court erred when it concluded that clear and convincing evidence existed to terminate her parental rights under 23 Pa. C.S. § 2511(a)(2) and (a)(8). Second, Mother alleges the Court erred when it ruled, pursuant to 23 Pa. C.S. §2511(b), that termination of Mother's parental rights would best serve Child's needs and welfare.[3]

BACKGROUND

The Allegheny County Office of Children, Youth and Families ("CYF") first became involved with Mother and Child in July 2014.[4] CYF's involvement began shortly after Child's birth, following an incident for which Mother was charged with, and ultimately convicted of, endangering the welfare of a child.[5] Over the next several years, CYF continued to receive referrals alleging ongoing substance abuse, intimate partner violence, and lack of appropriate supervision for Child.[6] Mother became incarcerated in 2018 at which time maternal grandmother assumed care of Child.[7] On June 20, 2019, Mother was released from jail and began having contact with Child, though she was not permitted to be Child's full-time caregiver due to the conditions of her probation.[8]

On August 26, 2019, CYF accepted the family for services due to concerns regarding substance abuse for both Mother and maternal grandmother.[9] In August of 2020, Child returned to Mother's care in a household that included Mother's partner, D.C.[10] Although CYF did not initiate a dependency proceeding, CYF maintained contact with the family to ensure Mother was attending drug and alcohol treatment as both Mother and D.C. have a history of opioid addiction.[11]

On March 19, 2021, CYF received the referral that ultimately resulted in Child's removal from Mother.[12] CYF learned that Mother experienced severe injury and bruising to her arms and provided conflicting accounts regarding how the injuries occurred.[13] The injuries themselves, along with observations of Mother's interaction with D.C., raised significant concerns regarding intimate partner violence. Neither Mother nor D.C. could provide verification of their drug and alcohol treatment, and Mother failed to follow through on a requested drug screen.[14] After unsuccessful efforts to gain Mother's cooperation and satisfy safety concerns, CYF obtained an emergency custody authorization ("ECA").

CYF placed Child in foster care on March 25, 2021, where she has since remained.[15] The Court adjudicated Child dependent on May 19, 2021 and ordered that she remain in placement.[16] The Court found that the conditions requiring placement included Mother's need to participate in the level of drug and alcohol treatment recommended to establish and maintain sobriety, her need to demonstrate appropriate parenting capacity, and her need to address intimate partner violence concerns.[17]

On November 10, 2022, CYF filed its petition to terminate Parents' parental rights and a hearing was held on August 11, 2023. During the termination hearing, the Court heard testimony from the following witnesses:

- Katie Baumgarten, CYF Casework Supervisor;
- Amber Dornin, Every Child Foster Care Caseworker;
- Rachel Jockel, Mathilda Theiss Behavioral Health Therapist;
- Dr. Beth Bliss, Ph.D, Licensed Psychologist; and
- Daved Richardson, Certified Addiction Counselor.

The Court admitted the following exhibits into the record:

- Joint Exhibit A: Stipulations;
- CYF Exhibit 1: Dependency Court Orders;
- CYF Exhibit 2: Mother's Drug Screening Results;
- CYF Exhibit 3: Family Service Plans;
- CYF Exhibit 5: ChildLine Report;
- CYF Exhibit 6: Reports of Dr. Beth Bliss; and
- Mother's Exhibit A – Women's Center & Shelter letter.

The evidence at the hearing established that Mother has not successfully addressed the needs identified over the life of the case, and that termination of Mother's parental rights best serves Child's needs and welfare.

At the time of Child's removal in March of 2021, Mother had been struggling with substance abuse and had failed to provide CYF with documentation of participation in any treatment program.[18] The same remained true at both the time of the filing of the termination petition and at the termination hearing. Since Child's removal, Mother has never provided any documentation confirming attendance at or completion of a drug treatment program.[19]

Mother has additionally failed to attend and complete drug screens, attending only 10 out of the 55 requested between Child's removal and the filing of the termination petition.[20] Of those 10 screens, Mother tested positive for illicit substances on 5 occasions, indicating continuing use.[21] Indeed, during a home visit in July of 2022, the caseworker observed what appeared to be stamp bags outside Mother's home.[22] Upon making contact with Mother, the caseworker observed her to have glassy eyes and a freshly bleeding prick on a vein in her hand, again indicating active substance use.[23] The evidence established that at no time over the life of the case has Mother been able to demonstrate any sobriety.

In addition to Mother's failure to demonstrate recovery from substance abuse, Mother also failed to address CYF's and the Court's concerns regarding intimate partner violence between herself and D.C. Although Mother completed an intimate partner violence course in December of 2021, she has remained in a relationship with D.C. and has continued to deny the existence of any physical or verbal violence between the two even when reported by Child.[24] Further, Mother has demonstrated no understanding of or accountability for the impact on Child of Mother's relationship with D.C.[25] Child has repeatedly expressed her desire to have no contact with D.C. Despite Child's express wishes, Mother continued to discuss D.C. during visits and attempt to contact him making Child extremely uncomfortable.[26] In sum, Mother's lack of progress toward any of the established goals persisted throughout the duration of the case.

While Mother has been unable to demonstrate sobriety or address the concerns regarding intimate partner violence, Child has thrived in her pre-adoptive foster home. Both the CYF caseworker and Every Child caseworker have observed Child to be comfortable in Foster Parents' care with all her needs being met.[27] Similarly, during the interactional evaluation between Foster Parents and Child, Dr. Bliss observed Child to be bonded and attached to Foster Parents and further observed that they interacted as a family unit.[28]

Notably, Dr. Bliss also observed a bond between Mother and Child during their interactional evaluation in June of 2022.[29] The foster care caseworker has made similar observations.[30] However, since the time of Dr. Bliss's evaluation, Child has become less willing to see Mother.[31] Indeed, at the time of the termination hearing, Child's visitation with Mother had decreased to the point it was solely at Child's discretion.[32] Given Child's strong bond with her foster parents, Dr. Bliss opined that their relationship, as well as Child's ongoing participation in weekly counseling, could mitigate any potential detriment to Child from termination of Mother's parental rights.[33] Dr. Bliss further testified that maintaining a relationship with Mother could cause detriment to Child if Mother appeared under the influence at visits, brought D.C. to visits, or visited inconsistently.[34] These circumstances, Dr. Bliss opined, could be harmful and retraumatize Child.[35]

It was against this background that the Court determined to terminate Mother's parental rights, pursuant to 23 Pa. C.S. §2511(a)(2) and (a)(8).

ISSUES ON APPEAL

In her Concise Statement of Matters Complained of on Appeal, Mother asserts the following challenges to this Court's Order of August 21, 2023:

> (a) [t]he trial court abused its discretion and/or erred as a matter of law in granting the petition to involuntarily terminate Mother's parental rights pursuant to 23 Pa. C.S. §2511(a)(2), and (8). There was not clear and convincing evidence that the repeated and continued incapacity, abuse, neglect, or refusal of Mother caused the child to be without essential parental care, control, or subsistence necessary for her physical or mental well-being, and that the conditions and causes of any incapacity, abuse, neglect, or refusal cannot or will not be remedied by Mother. The conditions which led to the removal of the child no longer exist and termination of

parental rights does not best serve the needs and welfare of the child.[36]; and,

(b) [t]he trial court abused its discretion and/or erred as a matter of law in concluding that CYF met its burden of proof by clear and convincing evidence that termination of Mother's parental rights would best serve the needs and welfare of the child pursuant to 23 Pa. C.S. §2511(b) when the record would not support such a conclusion. Furthermore, CYF did not meet its burden under Pa. C.S. §2511(a) precluding the trial court from making a finding under Pa. C.S. §2511(b).[37]

DISCUSSION

To terminate parental rights, a trial court must first find clear and convincing evidence that grounds for termination exist under one of the eleven subsections of 23 Pa. C.S. §2511(a). If grounds exist, the court must then consider, under 23 Pa. C.S. §2511(b), whether termination would best serve the Child's developmental, physical and emotional needs and welfare.[38] On review, the Superior Court should find that competent evidence supports this Court's decision.[39]

A. Clear and convincing evidence established that grounds to terminate parental rights exist pursuant to 23 Pa. C.S. §2511(a)(2) and (a)(8).

This Court found that CYF established two separate grounds for termination of Mother's parental rights, based on 23 Pa. C.S. § 2511(a)(2) and (8). Mother challenges the sufficiency of the evidence on both of those grounds. Of course, this Court need only find that one ground under § 2511(a) has been established in order to terminate parental rights. Thus, the Superior Court need not review the evidence regarding § 2511(a)(2) if the evidence regarding § 2511(a)(8) supports the Court's order.[40]

1. Grounds for termination pursuant to 23 Pa. C.S. §2511(a)(8).

To establish grounds to terminate parental rights under 23 Pa. C.S. §2511 (a)(8), CYF must prove that

(8) [t]he 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.[41]

Further, the statute directs that "the court shall not consider any efforts by the parent to remedy the conditions described . . . which are first initiated subsequent to the giving of notice of the filing of the petition."[42]

In this matter, the Court authorized Child's removal from Mother's care on March 24, 2021. Child was placed with her Foster Parents on March 25, 2021and has remained in placement ever since.[43] CYF filed its petition for termination on November 10, 2022, 19 ½ months after the Child was placed.[44] Thus, 19 ½ months had elapsed by the time the petition was filed, and almost 30 months had elapsed by the date of the termination hearing.

At the time of adjudication, the Court defined the conditions that required Child's placement as Mother's need to participate in the level of drug and alcohol treatment recommended to establish and maintain sobriety, her need to demonstrate appropriate parenting capacity, and her need to address intimate partner violence concerns.[45] To address these conditions, the Court required Mother to participate in a drug and alcohol evaluation and follow all recommendations, comply with random urine screens, participate in domestic violence services, participate in coached or therapeutic visitation with Child, and attend supervised visits with child.[46] Over the subsequent months, the Court held regular review hearings and consistently required Mother to engage in the same services identified at the time of adjudication.[47]

The evidence at the hearing revealed that Mother's engagement in the specified services either did not occur or did not remedy the conditions requiring Child's placement. Though Mother completed one drug and alcohol evaluation in the fall of 2021, she was continually referred for further evaluations due to evidence of continued use.[48] Further, despite CYF's concerns regarding ongoing drug use, Mother failed to attend and complete a treatment program. Mother's attendance at drug screens was inconsistent and revealed that she continued to use illicit substances. Indeed, in July of 2022, the CYF caseworker observed Mother under the influence with what appeared to be fresh marks on her skin from using drugs. At no time over the life of the life of the case was Mother ever able to demonstrate her sobriety.

Regarding intimate partner violence, although Mother completed a course through the Women's Center & Shelter by December of 2021, Mother remained in a relationship with D.C. and refused to acknowledge the impact of his presence on Child. The CYF caseworker had ongoing conversations with Mother regarding D.C.'s presence over the life of the case.[49] Despite Child's repeated requests that D.C. not be present and that she not be required to have contact with him, Mother refused to accept Child's stated wishes and instead insisted that Child was being coached.[50] Even during her June 2022 evaluation with Dr. Bliss, Mother exhibited limited insight regarding the impact witnessing intimate partner violence could have on Child and continued to deny its existence in her relationship with D.C.[51] Given Mother's relationship, the Court continued to direct CYF to re-refer her for ongoing services as recently as July of 2023, though Mother never pursued further programing.[52]

Given the above, the Court justifiably concluded that the evidence established the first two elements required by 23 Pa. C.S. §2511 (a)(8).[53] The Court will address the third element, that termination serves the Child's needs and welfare, in Part B below.

2. Grounds for termination pursuant to 23 Pa. C.S. §2511(a)(2).

To establish grounds to terminate parental rights under 23 Pa. C.S. §2511 (a)(2), CYF must prove that

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

Unlike section (a)(8), which requires a narrow focus on the specific time period from the Child's placement to the filing of the termination petition, section (a)(2) permits a broader scope, encompassing events and history prior to the most recent removal of the Child and spanning the full time until the hearing itself.

As noted above, although Mother completed an intimate partner violence course, she remained in a relationship with D.C.

and continued to deny the existence of intimate partner violence in her relationship. At no time has Mother been able to show insight or understanding regarding the effect of her relationship with D.C. on Child or to believe that Child does not wish to interact with him. Additionally, Mother has never been able to demonstrate her sobriety, nor did she engage in services to address her substance abuse. Mother's participation in drug screens, though limited, revealed her ongoing use of illicit substances. Indeed, Mother admitted her active addiction to Daved Richardson, an experienced addiction counselor serving as a community support for Mother.[54]

The evidence supports the Court's conclusion that grounds exist to terminate Mother's parental rights pursuant to 23 Pa. C.S. § 2511(a)(2). Mother's substance abuse and intimate partner violence issues have left Child without essential parental care and control. These issues have persisted throughout the life of this case, demonstrating the repeated and continued nature of Mother's incapacity. Mother's lack of meaningful progress in addressing the issues, combined with her failure to understand their impact on Child, justify the Court's conclusion that Mother cannot or will not remedy these issues that have made her incapable of caring for Child.

B. Terminating Mother's parental rights serves the needs and welfare of the Child.

In relevant part, 23 Pa. C.S. § 2511(b) requires the court to give "primary consideration to the developmental, physical and emotional needs and welfare of the child" when terminating the rights of a parent. As discussed by the Superior Court in In re N.A.M., the inquiry into whether terminating a parent's rights serves the child's needs and welfare necessarily includes inquiry into the nature and status of any bond between the parent and child and the effect on the child of severing that bond, if it exists:

> However, the extent of the bond-effect analysis necessarily depends on the circumstances of the particular case. In re K.Z.S., 946 A.2d 753, 763 (Pa. Super. 2008).
>
> While a parent's emotional bond with his or her child is a major aspect of the subsection 2511(b) best-interest analysis, it is nonetheless only one of many factors to be considered by the court when determining what is in the best interest of the child. In re K.K.R.-S., 958 A.2d 529, 533–536 (Pa. Super. 2008). The mere existence of an emotional bond does not preclude the termination of parental rights. See In re T.D., 949 A.2d 910 (Pa. Super. 2008) (trial court's decision to terminate parents' parental rights was affirmed where court balanced strong emotional bond against parents' inability to serve needs of child). Rather, the orphans' court must examine the status of the bond to determine whether its termination "would destroy an existing, necessary and beneficial relationship." In re Adoption of T.B.B., 835 A.2d 387, 397 (Pa. Super. 2003).[55]

The importance of the trial court's consideration of whether a bond is "necessary and beneficial" to a child, "i.e., whether maintaining the bond serves the child's developmental, physical, and emotional needs and welfare" was recently discussed by the Pennsylvania Supreme Court in In the Interest of K.T.[56] There, the Supreme Court explained:

> Severance of a "necessary and beneficial" bond would predictably cause more than the "adverse" impact that, unfortunately, may occur whenever a bond is present. By contrast, severance of a necessary and beneficial rela tionship is the kind of loss that would predictably cause "extreme emotional consequences" or significant, irreparable harm.[57]

The K.T. Court emphasized that a trial court "must not truncate its analysis and preclude severance based solely on evidence of an 'adverse' or 'detrimental' impact to the child."[58] The Court concluded that if a bond is found to exist, for a trial court to grant termination, "there must be clear and convincing evidence that the bond is not necessary and beneficial."[59]

Though important, the parental bond analysis is just one part of a section 2511(b) inquiry. The K.T. Court emphasized that the inquiry must also "include consideration … [of] certain evidence if it is present in the record."[60] Though the Court examined the relevant evidence at issue in K.T. including child's need for permanency and the time she had spent in care, the pre-adoptive nature of the foster home, child's bond with foster parents, and whether foster parents met child's developmental, physical, and emotional needs, it found that the facts of each particular case will determine the factors for a trial court to consider.[61] The Court acknowledged that "case law indicates that bond, plus permanency, stability and all 'intangible' factors may contribute equally to the determination of a child's specific developmental, physical, and emotional needs and welfare, and thus are all of 'primary' importance in the Section 2511(b) analysis."[62]

With the above guidance in mind, the evidence in this matter supports the Court's conclusion that although Child shares a bond with Mother, that bond is neither necessary nor beneficial, and Child will not suffer extreme emotional consequences from termination of Mother's parental rights. Consequently, the evidence supports the Court's ultimate conclusion that termination of Mother's parental rights served Child's needs and welfare.

Given the testimony of both Dr. Bliss and the foster care caseworker that Mother and Child have continued to share a bond over the life of the case, the Court assumed its existence in considering the evidence. Despite the existence of their bond, Mother has demonstrated inability to prioritize Child's needs for safety and security over her own. The evidence demonstrated that Mother has failed to adequately address her struggle with intimate partner violence and substance abuse. Dr. Bliss opined that should Child return to an environment where these issues remained unaddressed, "it would be extremely physically dangerous for her as well as emotionally traumatic."[63] Dr. Bliss further opined that Mother's continued relationship with D.C. despite Child expressing fear of him could have negative effects on her, testifying that there could be "internalization of the message that her [M]other [is] choosing the man over her and also, again, exposure to things that are causing her fear or trauma."[64]

At the time of the termination hearing, Child had been in her pre-adoptive placement with Foster Parents for over two years. During that time, Child has become strongly bonded and attached to her Foster Parents and has achieved stability in their care.[65] Indeed, during an interactional evaluation in March of 2022, Dr. Bliss observed Child and Foster Parents to operate as a family unit. Dr. Bliss made this same observation during a follow-up evaluation in February of 2023. At that time Dr. Bliss observed Child to have a "positive and secure attachment" to Foster Parents. These conclusions were shared by both the CYF and Every Child caseworkers who observed Child to be comfortable in Foster Parents' care and that they continued to meet all her needs. This bond, Dr. Bliss opined, could mitigate any potential detriment to Child from termination of Mother's parental rights.

Mother continues to need drug and alcohol treatment and intimate partner violence counseling, per her court-ordered

goals. Given Mother's lack of progress toward her goals over the life of the case, the Court justifiably concluded that Child's need for safety, permanency, and stability outweighs the possible benefit to her of maintaining her relationship with Mother. While Child and Mother may share a bond as observed by caseworkers and Dr. Bliss, the evidence demonstrated that this bond is neither necessary nor beneficial, and consequently, Child will not suffer extreme emotional consequences from termination of Mother's parental rights. Accordingly, the evidence supports the Court's conclusion that termination of Mother's parental rights serves Child's needs and welfare.

CONCLUSION

Child needs the permanency, security, and safety that adoption will provide more than she needs any benefit she may derive from an ongoing relationship with Mother. For these reasons, this Court's order of August 21, 2023 should be affirmed.

BY THE COURT:
/s/The Hon. Eleanor L. Bush

[1]The termination of parental rights hearing was held on August 11, 2023, and this Court announced its decision that day. The decision was entered on the Court's docket on August 21, 2023.

[2]Father did not participate in the termination hearing and did not appeal this Court's decision.

[3]See Concise Statement of Matters Complained of on Appeal.

[4]Tr. August 11, 2023 at 23: 5-9.

[5]Id. at 23-24.

[6]Id. at 24: 10-15.

[7]Id. at 24: 13-15.

[8]Id. at 25: 2-7.

[9]Id. at 25: 8-12.

[10]Id. at 25-26; see also Joint Exhibit A at ¶ 11(d).

[11]Tr. August 11, 2203 at 25: 19-21.

[12]Id. at 26: 10-11.

[13]Joint Exhibit A at ¶ 11(k).

[14]Id. at ¶ 11(i-j).

[15]Id. at 36: 5-7.

[16]CYF Exhibit 1, Order of Adjudication dated May 19, 2021.

[17]See Joint Exhibit A, ¶ 12(b); see also CYF Exhibit 1, Order of Adjudication dated May 19, 2021.

[18]Tr. August 11, 2023 at 25-26; see also Joint Exhibit A at ¶ 11(d).

[19]Tr. August 11, 2023 at 29: 10-13.

[20]CYF Exhibit 2.

[21]Id.

[22]Tr. August 11, 2023 at 46-49.

[23]Id. at 49-50.

[24]See Mother's Exhibit A; Tr. August 11, 2023 at 32: 17-21.

[25]Tr. August 11, 2023 at 39; CYF Exhibit 5: Dr. Bliss Report dated July 31, 2022 at 11.

[26]Tr. August 11, 2023 at 39: 2-13.

[27]Id. at 37: 2-15, 67-68.

[28]Id. at 86: 4-11.

[29]Id. at 86-87.

[30]30 Id. at 64-65.

[31]Id. at 65-66.

[32]Id. at 66: 4-6.

[33]Id. at 98: 9-22.

[34]Id. at 99: 1-12.

[35]Id.

[36]Concise Statement of Matters Complained of on Appeal, ¶ 1.

[37]Id., ¶ 2.

[38]See In re J.F.M., 71 A.3d 989 (Pa. Super. 2013) (discussing two-step analysis by which the court must first find that grounds to terminate under 23 Pa. C.S. 2511(a) exist before addressing child's needs and welfare under 23 Pa. C.S. § 2511(b)).

[39]Id. at 992.

[40]In re Adoption of R.J.S., 901 A.2d 502, 516. n.3 (Pa. Super 2006) ("We emphasize that satisfaction of the requirements in only one subsection of Section 2511(a), along with consideration of the provisions in Section 2511(b), is sufficient for termination" [emphasis in original]).

[41]23 Pa. C.S. § 2511(a).

[42]23 Pa. C.S. § 2511(b); see also In re D.W., 856 A.2d 1231, 1235 (Pa. Super. 2004) ("We find that the evidentiary restriction set forth in § 2511(b) applies to the entire termination analysis.")

[43]See Joint Exhibit 1, Stipulation 11.

[44]Tr. August 13, 2021 at 41:8-10.

[45]See Joint Exhibit A, Stipulation 12(b); see also CYF Exhibit 5, Order of Adjudication dated May 19, 2021.

[46]See CYF Exhibit 5, Order of Adjudication dated May 19, 2021.

[47]See generally CYF Exhibit 1: Dependency Court Orders.

[48]Id.

[49]Tr. August 11, 2023 at 58: 7-9.

[50]Id. at 58: 12-22.

[51]CYF Exhibit 6: Dr. Bliss Evaluation Dated July 31, 2022, at 11.

[52]CYF Exhibit 1: Permanency Review Order dated July 3, 2023; Tr.

[53]In re Adoption of R.J.S., 901 A.2d at 511 ("To satisfy this subsection, [CYF] must show only (1) that the child has been removed from the care of the parent for at least twelve (12) months; (2) that the conditions which had led to the removal or placement of the child still exist; and (3) that termination of parental rights would best serve the needs and welfare of the child.")

[54]Tr. August 11, 2023 at 115-116. Mr. Richardson was the sole witness offered by Mother.

[55]In re N.A.M., 33 A.3d 95, 103 (Pa Super. 2011); see also In re K.Z.S., 946 A.2d 753 (Pa. Super. 2008) (discussing proper analysis of parent-child bond in terminating parental rights).

[56]In the Interest of K.T., 296 A.3d 1085, 1113(Pa. 2023).

[57]Id. at 1109-10.

[58]Id. at 1114.

[59]Id.

[60]Id. at 1113 n.28 (emphasis in original).

[61]Id. at 1112-1113.

[62]Id. at 1109.

[63]Tr. August 11, 2023 at 95: 9-11.

[64]Id. at 94: 5-11.

[65]CYF Exhibit 6, Dr. Bliss Report dated May 18, 2023; see also Tr. August 11, 2023 at 40: 14-22.