

Adoption of: R.J.H. Appeal of: J.A.W. (2024).

Judge Dubow joined the Court's opinion.

Holding: The Court affirmed the involuntary termination of Mother's parental rights finding that the Westmoreland County Children's Bureau (WCCB or Agency) met its burden by clear and convincing evidence under 23 Pa.C.S. § 2511(a)(2), (8), and (b). The Court found "repeated and continued incapacity" due to ongoing substance abuse, untreated mental health issues, and unstable living conditions rendering her unable to provide "Child with essential care" (p. 6). Additionally, the Court found the conditions causing this incapacity were unlikely to be remedied. The Court concluded that termination was in the child's best interests of Child citing the trial court which stated "that termination 'would establish an attainable end to the uncertainty that has characterized [Child's] life for the past two and half years'"[] (p. 12)

Analysis: The Court emphasized that deference is owed to the trial court's fact-finding role: "Where the trial court's factual findings are supported by the evidence, an appellate court may not disturb the ... ruling unless it has discerned an error of law or abuse of discretion." (p. 3) The Court recognized that it is "not equipped to make fact-specific determinations on a cold record, where the trial judges are observing the parties during the relevant hearing and often presiding over numerous other hearings regarding the child and parents." (p. 4)

Background: Child was born in December 2018 and had been in the Agency's care since November 18, 2021, following emergency custody due to serious concerns related to Mother's and another parent's illegal drug use. The trial court described: "The safety concerns preventing the Child from remaining in the home ... were drug-related, in that Mother and Parent were suspected of using illicit substances in the home as well as taking the Child to drug deals and executing drug deals in the home."(p. 1-2) The child was adjudicated dependent in December 2021 and has remained in placement since.

The trial court explained that Mother failed to maintain sobriety or remedy her circumstances and that over the course of nearly three years, she submitted to 110 drug tests and tested positive on 93 occasions, including for cocaine as recently as August 23, 2023. (p. 6) The trial court noted, "Mother ... failed to follow through with any treatment" (p. 5) and "has never had unsupervised time with the Child since [Child] came into [A]gency custody" (p. 6) The Agency offered services to address Mother's addiction and mental health issues, but there was no evidence Mother engaged in any mental health treatment. Moreover, Mother failed to attend the termination hearing despite prior warnings and presented no testimony or evidence in her defense.

The Court noted that expert testimony supported the trial court's conclusion that Mother's untreated drug and mental health problems would hinder her parenting. The caseworker testified that Mother's unresolved addiction and unstable housing prevented her from providing proper care, and an attachment expert performed a bonding assessment that highlighted the lack of a beneficial parent-child bond. The expert reported that during interactions, Child often responded negatively or indifferently to Mother's affectionate attempts— "Child backed away when Mother reached out to touch her," (p. 10) "Child erased all of Mother's drawings while

laughing,” (p. 11) and “Child tried to close the door of the playroom on Mother and said bye-bye” (p. 11) The Court noted that by contrast the Child displayed a “strong, secure bond and attachment with her foster parents” (p. 11-12).

Applicable Laws: Section 2511(a)(2) Provides termination upon “The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for h[er] 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.”

Once (a)(2) is found the Court must consider Section 2511(b) which states that “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.” (p. 8)

*The opinion doesn't include language of (8) but it relates to the finding that the condition giving rise to the initial removal of the child has no been remedied and continue to exist and termination is in best interest.*