File #: 125.242
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N.W.M. and E.M., minors, through their parents and natural guardians, J.L.M. and N.M.M. and	**COURT OF COMMON PLEAS PHILADELPHIA COUNTY**
And	
J.A.M., grandmother of N.W.M. and E.M.	**MARCH TERM, 2020**
Plaintiffs	**No.**
v.	
PATRICE LANGENBACH and DEFENDER ASSOCIATION OF PHILADELPHIA,	
Defendants	

Plaintiffs, J.L.M. and N.M.M., as parents and natural guardians of N.W.M. and E.M., and J.A.M. by and through their attorneys, Jay L. Edelstein and Edelstein Law, LLP, by way of Complaint against the Defendants aver:

PARTIES

1. N. W. M. and sibling E.M. are minor citizens and residents of New Jersey, who may be contacted through their attorney, Jay L. Edelstein, Esquire at Edelstein Law, LLP at 230 S. Broad Street, Suite 900, Philadelphia, Pennsylvania 19102.

2. J.L.M. is the mother of N.W.M. and E.M. She is married to N.M.M., the father of N.W.M. and E.M. They are citizens and residents of New Jersey.

3. J.A.M. is the paternal grandmother of N.W.M. and E.M. and an adult citizen of Pennsylvania, residing in Enhaut, Pennsylvania 17113-2609.

4. Defendant, Patrice Langenbach, Esquire ("Langenbach"), is a citizen of the Commonwealth of Pennsylvania, residing at 101912 Templeton Drive in Philadelphia, Pennsylvania 19154. At all times material, she was a licensed attorney with a Pennsylvania Bar Identification Number of 39711. Minor Plaintiffs, N.W.M. and E.M assert a professional negligence claim in accordance with the Certificate of Merit attached at Exhibit "A." Minor Plaintiffs also attach at Exhibit "B" an Order of the Court of Common Pleas of Philadelphia County by the Honorable Judge Allan Tereshko ("Judge Tereshko") that makes a factual finding that Defendant Patrice Langenbach failed to act in the best interests of her clients.

5. Defendant, Defender Association of Philadelphia ("Defender Association") is a corporation existing under the laws of the Commonwealth of Pennsylvania with a place of business at 1441 Sansom Street, Philadelphia, Pennsylvania 19102. Minor Plaintiffs, N.W.M. and E.M assert a professional negligence claim in accordance with the Certificate of Merit attached at Exhibit "A." Minor Plaintiffs also attach at Exhibit "B" an Order of the Court of Common Pleas of Philadelphia County by the Judge Tereshko that makes a factual finding that Defendant Patrice Langenbach failed to act in the best interests of her clients.

6. At all times material, Patrice Langenbach was employed as an attorney by the Defender Association.

7. At all times material, the Defender Association acted through its employees, agents, servants, including but not limited to child advocates, attorneys, social workers, and investigators who acted within the course and scope of their employment and agency.

8. At all times material, Patrice Langenbach, was an employee and agent of the

Defender Association and was engaged in the practice of law at which she was obligated to utilize her professional skills, knowledge and care and to pursue her profession with the applicable standard of care and to act in the best interests of her clients in accordance with the law.

9. At all times material, Patrice Langenbach and Defender Association were covered by professional malpractice insurance policies and alerted the public to this fact through the Supreme Court of Pennsylvania Disciplinary Board as required by Pennsylvania Rule of Professional Conduct 1.4.

PRELIMINARY STATEMENT

10. N.W.M. and E.M., their parents, and J.A.M. were victims of calculated injustice perpetrated by officers of the Court.

11. J.L.M. and N.M.M. still absolutely vehemently profess and maintain their complete innocence of any charges of abusing their daughter. Due to the actions of the Defendants, the Office of the City Solicitor of Philadelphia, and Judge Lyris Younge a judge of the Court of Common Pleas of the Commonwealth of Pennsylvania, Philadelphia County ("Judge Younge"), they were unable to present medical evidence in their own defense, were repeatedly extorted by the Court, which held their daughter in foster care and eventually terminated their parental rights in an attempt to get them to confess to acts that they did not commit.

12. The shameful Court-ordered treatment of N.W.M. and E.M. and their family shocks the conscience of any free society built on the rule of law. Those who were supposed to look out for the best interest of the children, those who were charged with dispensing justice, candor to the tribunal, and ensuring that N.W.M. and E.M. would be in the best possible care

during their time in the family court system failed them.

13. Nothing will return the two-plus years during which N.W.M. and E.M. and their family were tortured on a daily basis by Defendants, the City Solicitor's Office, and all who actively participated or stood by and allowed this disgraceful miscarriage of justice to continue. The Pennsylvania Child Protective Services Law, 23 Pa.C.S. 6301, *et seq*, is clear that family reunification is paramount to all Court intervention in parental custody cases. Further, if a child is removed, special care should be given to use kinship care, a type of temporary care through family members. The actions of the Defendants, the City Solicitor, and others violated both the letter and spirit of that law and would be unchecked without the intervention of the attorneys who zealously represented their clients, the Superior Court, and those who reviewed the miscarriage of justice after the matter returned to the Common Please Court, and above all, N.W.M's parents' love for their daughter and son and the family's steadfast, unwavering desire for justice.

STATEMENT OF FACTS

14. Plaintiffs incorporate the previous paragraphs as if fully set forth herein.

A. N.W.M. MEDICAL CARE AND INITIAL REMOVAL FROM HER HOME

15. N.W.M. was born on February 12, 2016 to J.L.M. ("Mother"), who at the time of N.W.M.'s birth was a nurse practitioner employed at the Hospital of the University of Pennsylvania, and her father, N.M.M. ("Father"), who worked in the healthcare insurance industry.

16. In April 2016, N.W.M.'s parents, noticed increased fussiness in N.W.M.'s behavior. They took N.W.M. to the pediatrician several times. On April 6, 2016, her pediatrician diagnosed N.W.M. with an ear infection and prescribed an antibiotic. Later that day,

J.L.M. ("Mother") took N.W.M back to the pediatrician after noticing what she described as a "popping" on N.W.M.'s side. After the doctor could not feel the "popping" described by Mother, the doctor sent N.W.M. home with the same earlier diagnosis of an inner ear infection.

17. On April 7, 2016, due to increased fussiness, N.M.M. took N.W.M. to the pediatrician again. At the parents' insistence, the pediatrician ordered an outpatient chest x-ray, and parents dutifully took N.W.M. to Children's Hospital of Philadelphia ("CHOP"), where she underwent the chest x-ray.

18. The x-ray revealed mildly displaced acute fractures of N.W.M.'s sixth and seventh left posterior ribs. After admission to CHOP, Dr. Natalie Stavas, a physician with less than one year of employment at CHOP and still in her first seven months as a fellow in the child abuse program, informed Philadelphia Department of Human Services ("DHS") that the fractures were caused by non-accidental trauma that had to be caused by an adult. She dismissed any suggestion that the rib fractures could have been caused by anything other than an adult through an intentional act. Dr. Stavas made this diagnosis despite her own admission later in court proceedings that genetic testing revealed a variant or mutation that "was unlikely to contribute to the health of [N.W.M.'s] bones, [but she] could not make a definitive statement as to whether or not it contributed to her factures." See Exhibit "C," Superior Court Opinion, *In the Interest of N.W.M.*, a minor, p. 6 footnote 7.

19. As a result of this report by Dr. Stavas and other CHOP physicians that would eventually be called into question by other experts that were barred from presenting evidence in subsequent proceedings, DHS filed an emergency petition to remove N.W.M. and her brother E.M. from the custody of their parents.

20. At an emergency shelter-care hearing convened by Judge Younge, N.W.M. and

E.M. were ordered into foster care. N.W.M. was placed with a felon, convicted in Montgomery County of violations of 18 P.S. §2904§§A, Interference with the Custody of Children, under docket CP-46-CR-0006636-2009. That the very foster parent chosen for N.W.M., had a previous conviction for interference in child custody, underscores the tragedy of this sad case. E.M. was placed with J.A.M. at the family home after his parents moved out to allow for his grandmother to take custody of him.

21. A subsequent x-ray of N.W.M., taken on April 21, 2016, revealed a third fracture not seen on the x-rays previously. Despite this fracture appearing in an x-ray taken days after N.W.M. was removed from her parents' custody and while she was in foster care, Dr. Stavas still attributed the cause of the fracture to a time frame in which she was in the custody of her parents.

B. JULY 7, 2016 HEARING

22. N.W.M. and E.M. remained in foster care and out of the custody of their parents through a July 7, 2016 hearing before Judge Younge in the Philadelphia Court of Common Pleas, Family Division. The Department of Human Services ("DHS") was represented by Alicia Bennette Harrison, Pennsylvania Bar Identification number 206507 ("City Solicitor Harrison"). Parents denied all allegations of abuse against them and were represented by Claire Leotta, Esquire for Mother and Brandi McLaughlin, Esquire for Father respectively.

23. Prior to that hearing, Defendant Patrice Langenbach was appointed as the Child Advocate for N.W.M. and E.M. As the Child Advocate Attorney for N.W.M. and E.M., Defendant Langenbach was tasked by the Rules of Professional Conduct with representing the best interests of the children and advocating for those interests in accordance with the Pennsylvania Child Protective Services Law ("CPSL").

24. At the July 7, 2016 hearing, Defendant Patrice Langenbach accepted Dr. Natalie

Stavas as an expert without questioning Dr. Stavas' qualifications, despite Dr. Stavas' admissions that she was not board certified in child abuse, was under the supervision of other doctors at CHOP regarding her medical opinions on child abuse, and had only been working at CHOP since September 2015. Defendant Langenbach also accepted without questioning Dr. Stavas' testimony that the rib fracture found on April 21, 2016 was present on the first x-ray despite no reasonable medical explanation as to how that was possible.

25. Later in the hearing, Defendant Patrice Langenbach asked questions intentionally aimed at damaging J.L.M. Specifically, Defendant Langenbach asked a social worker who testified why N.W.M. was not taken to an emergency room, even though parents took N.W.M. to her pediatrician on multiple occasions prior to April 6, 2016 and twice on that day.

26. Mother testified at the July 7, 2016 that her son E.M. bumped his sister, sometimes forcefully, which may have been an explanation for the rib fractures. Defendant Langenbach in advocating for a finding that N.W.M. had been abused by her parents advocated that Mother had invented this contact and that Mother was incredible.

27. Later in the same hearing, Defendant Langenbach argued that E.M. and N.W.M. could not be placed together, because of mother's testimony that she had described as incredible just a few minutes earlier.

28. Defendant Langenbach advocated for the removal of both N.W.M. and E.M. from their parents' custody. She stated that she would support leaving E.M. with his paternal grandmother, Plaintiff J.A.M., at this point. At this time, N.W.M. was placed with the above-referenced foster care parent.

29. Despite parents' attorneys' objections, Judge Younge ordered N.W.M. and E.M. removed from the custody of their parents. Despite requests from parents' attorneys to place

N.W.M. with willing family members instead of a stranger in foster care, Judge Younge kept N.W.M. in non-kinship foster care.

30. This unjust act was compounded by Judge Younge's decision to reunite E.M. and his parents, a reunification to which Defendant Langenbach objected, stating "I think the parents need to do some work. They need to you know go to therapy." By this time, both parents had completed required parenting classes. As E.M. had been in the custody of J.A.M., his paternal grandmother up until this time, his reunification should have allowed for J.A.M. to take in her granddaughter, N.W.M. Defendant Langenbach and the City Solicitor objected to this and Judge Younge refused to grant kinship care to J.A.M.

31. When Judge Younge returned E.M. to his parents, Defendant Langenbach objected to that, saying "I think that the parents need to do some work. They need to go to therapy. They need to show something." At this point, the parents had completed court ordered parenting classes and were both in therapy.

32. Later in the hearing, Michelle Rodriguez a CUA social worker testified that during the court-ordered visits, between the initial removal and the July 7, 2016 hearing, she actually observed behavior by E.M. completely consistent with Mother's testimony during the hearing. Despite calling Mother incredible, the Court, the City Solicitor and Defendant Langenbach used this behavior as a reason to separate J.W.M. and E.M. from kinship foster care and continue N.W.M's placement with a stranger.

33. Judge Younge ordered a hearing in August to revisit the issue of kinship care and to update the Court on the progress of the parents in court-ordered programs.

34. 62 P.S.§1303 states: "the county agency shall give first consideration to placement with relatives or kin. The county agency shall document that an attempt was made to place the child with a relative or kin. If the child is not placed with a relative or kin, the agency shall document the reason why such placement was not possible." Despite this directive and J.A.M.'s availabiilty, N.W.M. remained with an unrelated foster parent.

C. AUGUST 18, 2016 HEARING

35. On August 18, 2016, Judge Younge held a hearing to revisit the issue of dependency, placement and parenting progress.

36. At that hearing, Defendant Langenbach immediately moved to remove the supervising social worker from the Community Umbrella Agency Bethanna, Michelle Rodriguez, because as Ms. Langenbach stated, "just some very over the top blowing [sic] recommendations made with respect to the parents that appeared to be somewhat not objective at this point."

37. City Solicitor Harrison, as counsel for DHS, was restrained from asking for employees CUA social agency Bethanna to be removed from the case, due to DHS resource shortage. She ostensibly objected to DHS being appointed to supervise N.W.M., but, upon information and belief, she and Defendant Langenbach planned this removal and orchestrated it through Defendant Langenbach. They were unhappy with any positive reports about the parents.

38. Upon information and belief, City Solicitor Harrison and Defendant Langenbach colluded to undermine Michelle Rodriguez's participation in the matter. They did this by having Defendant Langenbach make the recommendation as Child Advocate. This effort was the first of many in-court and, upon information and belief, out-of-court efforts to effectuate the destruction of N.W.M.'s and E.M.'s family.

39. Upon information and belief, Defendant Langenbach and Harrison did so, because they feared that Michelle Rodriguez's accurate assessment of the parents' care and love for N.W.M. and E.M. would undermine their scheme to permanently remove N.W.M. from her family.

40. Judge Younge determined that the parents were fully compliant with all court-ordered parenting responsibilities and were consistently visiting their daughter and bringing E.M. to see his sister.

41. Based on evidence that E.M. was doing well in his parents' home, Judge Younge discharged him from dependent care.

42. Defendant Langenbach immediately objected, citing safety concerns, which City Solicitor Harrison joined.

43. Judge Younge dismissed their objections, stating, "I return E.M. to their care because I believed that there were no safety concerns. And while I hear counsel for DHS and Child Advocate, your concerns that you have are the same ones that you had before. The report was that E.M. was safe, his needs being met. And I'm not going to keep the petition on E.M. So now it's just a case as to N.W.M."

44. Judge Younge dismissed Michelle Rodriguez's testimony and reports from a court-ordered psychological evaluation that were positive for the parents. Later, Judge Younge stated, "So let me tell you my challenge. We can keep visits as they are, if I had a CUA in place and all, but that doesn't move the needle. They're not getting their kids back."

45. Despite Judge Younge's earlier indication at the July 7, 2016 hearing that she would revisit the foster care placement and consider kinship care placement with J.A.M., N.W.M. remained with the foster care.

46. N.W.M. and E.M. remained separated from each other, seeing each other only at court-supervised visits. N.W.M., who was six months old at this time, saw her mother, who was breastfeeding her at the time of her removal from custody, only three times a week.

D. ACTIONS OF DEFENDANT LANGENBACH AFTER AUGUST 18, 2016 HEARING

47. At a Family School meeting held after the August 18, 2016 hearing, Defendant Langenbach attended.

48. Defendant Langenbach repeatedly disparaged parents to staff at the parenting school.

49. Upon information and belief, Defendant Langenbach stated to the staff, "It doesn't matter what they do, they won't be getting her back" and "I don't feel N.W.M. will be safe."

50. Parents continued to attend parenting classes, family school and all court-ordered programs in a thus-far futile attempt to be reunited with their baby daughter.

51. As she had since being appointed Child Advocate for N.W.M., Defendant Langenbach continued to dismiss the need for N.W.M. to be nourished by her mother's breast milk, which her mother continued to pump and provide since N.W.M.'s removal in April 2016. Defendant Langenbach stated that N.W.M. was "fine with formula."

52. Further, Defendant Langenbach continued to dismiss the bonding aspect of breastfeeding between N.W.M. and her mother.

E. DECEMBER 8, 2016 HEARING

53. Judge Younge held a permanency hearing on December 8, 2016 and received testimony from the DHS Social Worker, Molly McNeil, who replaced Michelle Rodriguez. The

DHS Social worker updated the Court about the progress parents had made and their compliance with all Court-ordered parenting programs.

54. Throughout questioning at this hearing, Defendant Langenbach faulted N.W.M.'s and E.M.'s parents for not admitting to abuse and wrongdoing that they did not commit.

55. During questioning of Ms. McNeil, Judge Younge interrupted to state:

> *And I was hoping this would give me "Yeah, we're going to reunification process. We don't have an explanation for the injuries. Parents aren't giving anything. And I'm not willing to be in denial about that. So, you know what, if we're going to stay stuck, we're going to stay stuck."*

56. In a back and forth with counsel, including Defendant Langenbach, Judge Younge added that she was open to hearing evidence that would explain the fractures, stating:

> *So, for example, and I'm not telling you what to do, you tell me it was a genetic kind of disposition of N.W.M. at birth. She has fragile bones. We have an expert to confirm there was trauma upon delivery and all that stuff, I receive that. That might be one way to do it, but I don't know if that's the case but I'm just giving a hypothetical. I can't generate the evidence.*

57. The Court confirmed that at the time of the hearing, neither parent was charged with any crime related to N.W.M.'s rib fractures. To date, neither parent has ever been charged with any crimes related to her injuries or any crime of any kind.

58. In response to counsel for the parents request for kinship care with J.A.M., after N.W.M. had been in foster care for almost eight months and with the holidays fast approaching, Defendant Langenbach opposed this request, stating:

And, Judge, just briefly with respect to the kinship request. I mean my position on the kinship request is exactly as it was in the beginning. I mean I don't -- we didn't use the grandmother as a resource in the beginning because of the fact, you know, I don't believe that the grandmother's acknowledging either with respect to the injury and how it occurred and if possibly it occurred from the parents.

59. Not a single record of any hearing to date in this case indicated that J.A.M. was denied kinship parenting because of some lack of acknowledgement of the cause of the injuries. No document indicates such a finding. Further, such a finding would have to have been made by a DHS social worker, and no such statement, testimony or document exists to support this statement to the Court. Defendant Langenbach continued to oppose J.A.M.'s appointment to a kinship care for N.W.M. to effectuate her goal of ending the family bond between N.W.M. and E.M., Defendant Langenbach's clients, and N.W.M. and her family.

60. Defendant Langenbach added, "Well, and N.W.M. is in a place where she is thriving. She's very well cared for and at this point I don't see any reason to move her to kinship. And I also would be concerned about access with kinship, very concerned about access." Defendant stated this opinion to the Court, that N.W.M. should not be placed with her Grandmother, who was already approved by the Court as a kindship provider for E.M.

61. Defendant Langenbach stated a concern about "access" to N.W.M., presumably by her parents. However, J.A.M.was living in Harrisburg at the time and was two hours away from Philadelphia, so the arrangement would not have provided the "access" for which Defendant Langenbach claimed concern.

62. Upon information and belief, Defendant's Langenbach statements above are derived from her collusion with the City Solicitor and also may have been developed in sidebar

with the Court, discussions outside the full participation of the attorneys for N.W.M.'s and E.M.'s parents.

63. Defendant Langenbach and City Solicitor Harrison continued to oppose kinship care in an effort to destroy the family bond between N.W.M., E.M., their parents, J.A.M., and their other relatives. This deliberate act was in furtherance of her clear goal from the outset of her representation to provide a basis for a petition for termination of parental rights with respect to N.W.M.

64. Judge Younge ruled that N.W.M. would continue living with her foster mother. N.W.M.'s parents appealed this finding to the Superior Court under dockets, No. 190 EDA 2017 and No. 154 EDA 2017. Judge Younge filed her opinion on this ruling 184 days later than the day it was due under the Rules of Appellate Procedure.

F. TIME FOLLOWING DECEMBER 8, 2016 HEARING

65. Despite her parents completing all court-ordered counseling, parenting classes, family classes and maintaining visits with N.W.M and having custody of E.M., N.W.M. was still placed with the felon foster parent.

66. Upon information and belief, Defendant Langenbach encouraged the foster parent to prepare to fully adopt N.W.M. during the time between the December 2016 hearing and March 2017 hearing. Further, upon information and belief, Defendant Langenbach engaged with City Solicitor Harrison to lay out a plan by which N.W.M. would never be placed in kinship care and never gain a bond with her parents, brother, grandparents and any other family member.

67. N.W.M.'s family observes both the Jewish and Christian holidays. Her parents intended to have her celebrate a Baby Naming ceremony, a Simcaht Bat, but this ceremony never

occurred, due to the actions of Defendant Langenbach and City Solicitor Harrison and their advocacy before Judge Younge.

68. During this time, N.W.M. spent her first Hanukah and Christmas away from her brother and parents and extended family in the foster care system.

69. Based on Judge Younge's stated intention to take evidence, N.W.M.'s parents engaged medical experts in an effort to present medical evidence as an explanation for the fractures to N.W.M.'s ribs, one of which, as stated above, was discovered after N.W.M. had been removed from her parents' custody. Counsel for parents filed Motions with the Court to allow N.W.M. to be taken for testing in another state based on the genetic markers discussed at the July 7, 2016 hearing. They sought out experts who could review the medical records in the case and demonstrate to the Court the proper explanation for N.W.M.'s rib fractures that were not caused by an intentional act of the parents as Dr. Stavas erroneously opined.

G. MARCH 9, 2017 HEARING

70. Judge Younge presided over a hearing in the Court of Common Pleas on March 9, 2017.

71. At this hearing, Attorney Mark Freeman, Esquire, who entered his appearance as co-counsel for N.W.M.'s mother, attended. Heretofore, he had not participated in the now 11-month long custody process during which N.W.M. was still not placed in kinship care.

72. Judge Younge inexplicably would not permit N.W.M.'s mother to have two attorneys, despite no basis in law, and berated Mr. Freeman and Ms. Leotta for appearing in court together on behalf of one party.

73. Defendant Langenbach and City Solicitor Harrison requested a continuance, as they claimed to have been surprised by medical evidence presented by Mr. Freeman.

74. Mr. Freeman produced two expert reports that provided a medical explanation for N.W.M.'s rib fractures.

75. After Judge Younge's insistence that only one attorney could represent a party, Defendant Langenbach made an objection to the relevance of the medical expert reports that Mr. Freeman provided to Defendant Langenbach and City Solicitor Harrison, and that he intended to support with testimony by these experts at a later hearing.

76. Judge Younge then denied him the opportunity to represent N.W.M.'s mother and berated Mr. Freeman after he suggested that N.W.M.'s mother had a right to counsel, telling him, "You're going to have to appeal it again because I do not agree with you. I do not agree with you. I don't understand. If she's already has adequate representation in Ms. Leotta, why should she have a team of attorneys appearing in Court."

77. Defendant Langenbach and City Solicitor Harrison objected to a 30-day Court date and N.W.M.'s next hearing was schedule for sixty days from March 9, 2017.

78. Due to Judge Younge's inability to have two attorneys attend a hearing, nothing relating to N.W.M.'s placement in foster care away or the ability of J.A.M. to act as kinship care was considered by the Court, and therefore N.W.M. was ordered to spend her first birthday apart from her family, due to the refusal of the Court to consider kinship care and the intentional refusal of Defendant Langenbach to present and advance that option to the Court.

79. Upon information and belief, this refusal continued her intentional scheme with City Solicitor to keep N.W.M. from her family so that they could file a termination petition to have N.W.M. adopted by her foster parent.

H. ACTIONS BY PARENTS TO REMOVE MS. HARRISON AS CITY SOLICITOR COUNSEL FOR DHS

80. Following the March 2017 hearing, counsel for N.W.M.'s mother filed a motion to have Ms. Harrison removed as counsel for DHS based on her actions to subpoena substantive progress notes of psychological therapy that N.W.M.'s parents were attending. Both of N.W.M's parents' counsel provided significant progress reports from therapists from the outset of this litigation. City Solicitor Harrison was not satisfied with that production and continued to attempt to gain access to the very essence of the parents' therapy in the actual therapists' mental impressions and confidential notes from therapy sessions. None of what City Solicitor Harrison attempted to subpoena had a legal nexus to the matter before the Court.

81. City Solicitor Harrison opposed her removal as counsel for DHS in this matter.

I. MAY 23, 2017 PETITION TO TERMINATE PARENTAL RIGHTS

82. On May 10, 2017, DHS visited the home of J.A.M. in order to conduct investigation for kinship care, so that N.W.M. could live with her grandmother instead of the foster parent.

83. Upon information and belief, on May 23, 2017, City Solicitor Harrison, fearing that DHS was finally moving toward reunifying N.W.M. with her family, with the consent and encouragement of Defendant Langenbach, filed a Petition to Terminate the Parental Rights of J.M. and N.M.

84. City Solicitor Harrison used a petition that is a template used in most proceedings of this type, which requests an Order: "a) Authorizing the Philadelphia Department of Human Services to give consent adoption of N.W.M. without the further consent of or notification of J.L.M. and N.M.M."

85. In doing so, Ms. Harrison certified to the Court under her own verification:

- Parent conduct for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of

relinquishing claim to a child or has refused or failed to perform parental duties;

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

- The child has been removed from the care of the parent by the Court or under a voluntary agreement with an agency, twelve 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 the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

- The child has been removed from the care of the parent by the Court or under a voluntary agreement with an agency, twelve 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, 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 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.

86. This certification was made despite the fact that parents complied with all Court Ordered therapy, parenting classes and were in family school as required. N.W.M.'s parents completely complied with all that was asked of them by the Court and went above and beyond these requirements in an attempt to reunify with their daughter.

87. Stunningly, the central justification for the Termination Petition offered by City Solicitor Harrison was family separation, which Defendant Langenbach and City Solicitor Harrison achieved through denials of reunification that were manufactured with approval of the Court.

88. Upon information and belief, Defendant Langenbach and City Solicitor Harrison conspired to file this termination petition from the outset of their involvement in this matter and filed it after DHS worked to undermine their scheme by investigating J.A.M. for kinship placement that should have been made long before May of 2017.

J. MAY 23, 2017 HEARING

89. Judge Younge convened a hearing on May 23, 2017 in that Court of Common Pleas Family Division.

90. Before the hearing, City Solicitor Harrison filed a petition to change the goal of N.W.M.'s placement from reunification to termination of parental rights. By this time, Ms. Harrison and Defendant Langenbach had succeeded in their scheme to keep N.W.M. from kinship care and parental custody of over twelve months, which satisfied one of the requirements for termination of parental rights. Defendant Langenbach was in full agreement with the termination of parental rights.

91. As a result of the goal change, Defendant Langenbach was removed as Child Advocate for N.W.M., but was ordered by the Court to remain as guardian ad litem for N.W.M. Defendant Langenbach fully supported the termination of parental rights goal change.

92. The Court indicated that a hearing on this termination of rights would occur in the future, but Judge Younge still took testimony from DHS Social Worker Molly McNeil that day.

93. Ms. McNeil had been tasked with determining if J.A.M.'s home was appropriate as a placement for N.W.M.

94. Ms. McNeil testified that J.A.M.'s home was appropriate and her clearances were in order.

95. Ms. McNeil testified that DHS would "explore her as a kinship provider."

96. Defendant Langenbach questioned Ms. McNeil about J.A.M.'s attendance at a supervised visit with N.W.M. at an agency. Defendant indicated that J.A.M.'s presence at a supervised visit with N.W.M.'s parents was "not authorized by the Court."

97. At this time, J.A.M. had seen her granddaughter only a handful times since her birth, and these visits were mostly early on in the matter when she took E.M. who was then in her custody as a result of the initial placement after the April 2016 shelter-care hearing.

98. At this time, N.W.M. was still only allowed to spend time with her brother E.M. at Family School.

99. The family was permitted to celebrate N.W.M.'s first birthday with a supervised party.

100. Ms. McNeil testified that she was unaware of any recent visits by J.A.M.to see her granddaughter. Despite no evidence that this had occurred, Defendant alerted the Court that any visit by J.A.M. to see her granddaughter would be in violation of the Court's Order. Despite being tasked with looking out for the best interests of N.W.M., Defendant Langenbach objected to N.W.M. interacting, even for an hour a week, with her grandmother, J.A.M., despite no finding against J.A.M.by the Court and her role as the initial caregiver for E.M.

101. Despite the goal change that DHS requested immediately before the hearing, DHS was following its mandate and working to reunite N.W.M. with her family. Upon learning that DHS was doing precisely that, and that it deemed J.A.M. an appropriate caregiver and N.W.M's placement there as vital to reunification with her family, the Court questioned why DHS would be doing that, stating "Was there an Order from the Court that we explore kinship care at this point?" Defendant Langenbach reminded the Court, "No. And in fact the Court had indicated that we were not going to be exploring it." This instruction from the Court exists nowhere in any

transcript of any hearing, and upon information and belief may have been developed by Defendant Langenbach and City Solicity Harrision on their own.

102. Ms. McNeil testified that DHS was also exploring J.A.M.as a kinship placement in the event that the Court chose to terminate the parental rights of N.W.M.'s parents.

103. Judge Younge reiterated that it was her decision not to place N.W.M with her family.

104. When asked to allow J.A.M.to visit her granddaughter, Judge Younge simply said, "No. Next Question" without indicating how preventing N.W.M. to visit her grandmother would be in the best interests of N.W.M.

105. Defendant Langenbach did not offer any support for counsel's request for N.W.M. to simply see her grandmother at supervised visits. Despite N.W.M. being a year old at this point, Defendant Langenbach worked to ensure that she would be cut off from her family as much as possible.

106. Judge Younge concluded the hearing by scheduling a hearing to determine whether N.W.M. should be adopted by a non-family member.

K. ACTIONS BY COUNSEL FOR PARENTS AFTER TERMINATION PETITION FILED BY CITY SOLICITOR AND DEFNEDANT LANGENBACH

107. Based on the unconscionable actions of Defendant Langenbach and City Solicitor Harrison, counsel for the parents filed various petitions and appeals in an effort to halt this steamrolling of their rights and the destruction of their family.

108. Counsel for the parents filed emergency petitions with the Pennsylvania Superior Court to dismiss the Termination Petitions and stay any consideration of the petition until the appeals filed after Judge Younge's December 2016 ruling were decided.

109. Judge Younge still had not filed an opinion in the original appeals taken by parents in response to her rulings in December 2016 until August of 2017.

110. The Superior Court denied parents' emergency stay requests on August 17, 2017, so the matter was scheduled to proceed on the Termination Petition at a hearing scheduled for October 26, 2017.

111. Counsel for parents filed a Motion for Recusal of Judge Younge on September 6, 2017.

112. Defendant Langenbach filed a response to parents' Motion in which she objected to Judge Younge's recusal in which she stated, "Nothing in the record indicates a bias, impartiality, or prejudice toward the parents or any party for that matter."

113. Parents filed a motion to review the entire DHS file on October 17, 2017.

114. City Solicitor Harrison responded in opposition to that motion on October 23, 2017. Upon information and belief, Defendant Langenbach joined that opposition.

L. OCTOBER 23, 2017 HEARING

115. Judge Younge convened a hearing on May 23, 2017 in that Court of Common Pleas Family Division.

116. Curley Cole was appointed Child Advocate for N.W.M. and Defendant Langenbach still remained a participant in the matter as Guardian ad Litem for her.

117. Mr. Cole was absent from the courtroom for portions of the hearing. Counsel for the parents requested a continuance so that he could be updated on the proceedings, since he had been appointed just recently.

118. Judge Younge denied a continuance request.

119. Judge Younge denied the motions made to recuse her from this matter.

120. N.M.M. testified in defense of his parental right to be the father of N.W.M. at this hearing. He explicitly denied that he or his wife were responsible for the injuries to his daughter.

121. When asked by counsel if N.W.M. would suffer irreparable harm in his parental rights were terminated and he could no longer see his daughter, N.M.M. stated:

> *Yes. Because she knows us through visits. And when I see her, you know, she screams and shouts and runs towards me. And she knows who I am. I don't know what her little mind thinks who I am. But I'm this guy that shows up and, you know, gives her love and attention for like two hours a day for, you know -- and then just -- that would I think cause her some sort of psychological problem from my non-expert opinion. I don't know. I'm just her dad.*
>
> *So, I don't know. Yes, it would. I believe it would.*

122. When asked the same question about his wife, N.M.M. stated that N.W.M. would suffer irreparable harm:

> *She says, "mommy," "mama." And when that happens, her arms go up. And she grabs her. And she basically only lets J.L.M. feed her. I mean like she eats herself, but if we have like a bottle or something to drink she prefers J.L.M. to do that. And, you know, hugs, and lap sitting, and story reading, and stuff like that.*

123. When Mark Freeman, Esquire, counsel for Mother, asked him about E.M.'s interactions with his sister, Father detailed how he and his wife had custody of E.M. since July 7, 2016. Defendant Langenbach and City Solicitor objected to this evidence as irrelevant. Judge Younge sustained this objection.

124. Dr. William Russell, a forensic psychologist, testified that he completed a Parenting Capacity Report with respect to the parents. He also testified that to an opinion within a reasonable degree of psychological certainty that both could reunify with their daughter.

125. During the proceedings, Defendant Langenbach objected on her own behalf or joined an objection by City Solicitor Harrison at least 37 times, as attorneys for N.W.M's parents attempted to present evidence to the Court. A vast majority of these objections were sustained by the Court.

126. Even when counsel for the parents attempted to place evidence on the record that they had custody of E.M. for over a year without any incident, Defendant Langenbach objected as irrelevant. The Court sustained these objections, despite Defendant Langenbach's stated concern that safety was an issue.

127. Nicky Burgess, an employee of the foster parent agency Second Chance, through which N.W.M. was placed with her foster parent, testified that she frequently observed visits between N.W.M. and her parents.

128. When asked if N.W.M. had a bond with her parents, Ms. Burgess testified that she did believe they bonded.

129. Ms. Burgess testified that she observed N.W.M. cry after being taken from her parents at the end of visits "a few times when being put in the car."

130. City Solicitor Harrison and Defendant Langenbach together with Mr. Cole, the Child Advocate, argued for the termination of parental rights.

131. Mr. Cole did so despite admitting, "Even though I got the case yesterday." Despite the Court removing Defendant Langenbach as Child Advocate in May 2017, Mr. Cole

joined the case on October 22, 2017. He did indicate that he spent "the last few hours-24 hours" on the case.

132. Judge Younge terminated parental rights and ordered N.W.M. to be subject to the process by which she would be adopted by a non-family member.

133. At the end of the hearing after Judge Younge made her ruling and despite E.M. having remained safely with his parents since July 2016, and him not even being monitored by DHS, Defendant Langenbach still attempted to have him removed from his parent's care, stating, "So, I'm just asking that the Court ask DHS to check on E.M. and in an abundance of caution if necessary to order an OPC."

134. City Solicitor Harrison joined this request despite both counsel repeatedly objecting to any evidence that E.M. had remained safely in the home for over a year being presented in the hearing that just transpired.

135. The Court scheduled a hearing on January 26, 2018.

M. ACTIONS OF DEFENDANT LANGENBACH AFTER OCTOBER 23, 2017 HEARING

136. Following the hearing at which their parental rights were terminated, Mother and Father wanted to provide a Halloween costume to their daughter for the second Halloween which they would not be present.

137. N.M.M. attempted to deliver the costume to the Second Chance Agency in Philadelphia.

138. Defendant Langenbach, angered by N.W.M's parents' attempt to provide a simple costume for their daughter, drafted emails to Second Chance staff instructing them that contact was not permitted. She then enlisted City Solicitor Harrison to threaten the parents with further Court hearings "to address their non-compliance with the Court's Order."

139. Upon information and belief, Defendant Langenbach contacted Second Chance to further disparage the parents and prevent any contact at all by N.W.M. and her family.

N. APPEALS AND JUSTICE FOR N.W.M. and HER FAMILY

140. Counsel for the parents filed an appeal to the Superior Court, docketed at 3714 & 3715 EDA 2017.

141. N.W.M. spent another Thanksgiving and Holiday Season away from her family in the custody of the foster parent. N.W.M. was kept from her parents from the time of the October 23, 2017 hearing through January 18, 2018. During this time, N.W.M. was hospitalized for a respiratory infection, however, her parents and family were never made aware of this hospitalization. E.M. also did not get to see his sister during this time. Thus, Judge Younge's Order terminating Parental Rights also terminated E.M.'s Sibling Rights.

142. On January 18, 2018, the Superior Court stayed the Order changing the goal to adoption and terminating parents' rights. The Court also reinstated parental visitation until resolution of the appeals docketed at 3714 and 3715 EDA 2017 in the Superior Court. The Court reinstated the July 7, 2017 visitation schedule in place that provided for 4 hours of visits weekly.

143. In light of the Superior Court's Order, counsel for the parents requested expanded visits, as it was clear that the ruling against the parents was on its way to being reversed and the conditions of family separation caused by Defendant Langenbach and City Solicitor Harrison and the Court were coming to an end.

144. Defendant Langenbach, at this time N.W.M.'s Gaudian ad Litem, discussed the request to expand visits with City Solicitor Harrison. In an email both Defendant Langenbach and City Solicitor Harrison denied this request.

145. N.W.M. met with her parents four hours a week from January 18, 2018 onward until further intervention by the Superior Court on May 8, 2018.

146. On May 4, 2018, the Superior Court of Pennsylvania docketed an Order and Opinion of 36 pages, *In the Interest of N.W.M., a minor*, reversing Judge Younge's decision to terminate the parental rights of Mother and Father.

147. The Superior Court in its opinion stated:

> *We remind the court that "the primary purpose of the Juvenile Act is 'to preserve the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this chapter.'" 42 Pa.C.S.A. § 6301(b)(1). Moreover, the foregoing goals are to be achieved "in a family environment whenever possible, separating the child from parents* ***only when necessary for his welfare or in the interests of public safety.*** *" 42 Pa.C.S.A. § 6301(b)(3) (emphasis added). Any decision to remove the child from his home must be reconciled with the paramount purpose of preserving the unity of the family.* ***In Re Angry****, 522 A.2d 73, 75 (Pa. Super. 1987) (citations omitted). Involuntary termination of parental rights presupposes a finding by the juvenile court that the child is dependent and that, in the best interest of the child and by reasons of "clear necessity," removal from the parental home is required.* ***Id.*** *at 75. Here, the trial court's repeated refusal to consider approved kinship care, in light of the fact that it also found Parents fully compliant with their treatment goals as of December 2017 and where DHS supported kinship placement with paternal grandmother, is an abuse of discretion and not supported by the record. The court's decision runs counter to the primary purpose of the Juvenile Act, to preserve the family unit. Even if the court specifically found that*

returning N.W.M.to her Parents was not best suited to her safety and protection, the court was obligated to explore the possibility of her placement with "a fit and willing relative." ***See id.*** *42 Pa.C.S. § 6351(f.1)(4). Accordingly, we are constrained to reverse the court's December 8, 2016 permanency orders, which are not supported by clear and convincing evidence. (Italicized for the pleading, but emphasis not added).*

148. In footnote 30 of the opinion, the Court states:

We find ourselves constrained to comment as follows: despite record evidence that the trial court allegedly relied upon, the one factor, the elephant in the room, is that the trial judge was and remains the cause of the deteriorated bond between Parents and N.W.M.in this matter. The record is replete with attempts by Parents to meet the goals set by the trial judge, however she continued to put up barriers to reunification. As an example, the trial judge stated at the December 8, 2016 hearing that she wanted some testimony as to how the injuries happened. However, at every hearing from March 2017 onward, she refused to allow such testimony, stating that the failure of Parents to appeal her earlier decision with regard to the etiology of N.M.'s injuries was final and could no longer be addressed. When the agency stated that Parents had complied with their goals, the court said, "I'll find that [P]arents are compliant. It doesn't move the needle for me." She further stated that "I guess the other side of the conversation is if I leave her [in foster care] maybe I get closer to an answer as to what happened instead of moving her to grandmom. . . . So, I'm not going to consider kinship care."

When the agency determined that kinship placement was available and appropriate, the trial court ruled in May of 2017 that grandparent visitation with N.W.M.is immediately suspended; it is not in N.M's continued best interests to explore placement in kinship

care. In short, despite the goals of the Child Protective Services Law, the trial judge seems to have done everything in her power to alienate these parents from their child, appears to have a fixed idea about this matter and, further, she prohibited evidence to be introduced that might have forced her to change her opinion. While this court must take and does take the issue of abuse of a child very seriously, the fact that a trial judge tells parents that unless one of them "cops to an admission of what happened to the child" they are going to lose their child, flies in the face of not only the CPSL, but of the entire body of case law with regard to best interests of the child and family reunification. We find that the record herein provides example after example of overreaching, failing to be fair and impartial, evidence of a fixed presumptive idea of what took place, and a failure to provide due process to the two parents involved. Finally, the most egregious failure in this matter is the refusal to allow kinship care, despite the paternal grandmother being an available and approved source for same. The punishment effectuated by the trial judge was, at best, neglectful and, at worst, designed to affect the bond between Parents and N.W.M. so that termination would be the natural outcome of the proceedings. This is an extremely harsh penalty for parents who have complied in every way with the requirements of the CPSL.

149. The Court also recommended that Judge Younge recuse herself from further consideration of N.W.M.'s case, stating she "give serious consideration as to whether her apparent bias warrants that she recuse herself."

O. AFTERMATH OF SUPERIOR COURT ORDERS & REUNIFICATION OF THE FAMILY

150. Counsel for the parents filed an emergency motion seeking Judge Younge's recusal on May 7, 2018.

151. Despite the Superior Court's Order, DHS had not transferred N.W.M. out of foster care.

152. On May 9, 2018, City Solicitor Harrison stated that she would "be in touch" regarding N.W.M.'s removal from foster care.

153. On May 9, 2018, Defendant Langenbach informed counsel for parents that her understanding of the Superior Court's opinion was for N.W.M. to remain "status quo" in foster care.

154. Judge Younge recused herself and Judge Tereshko took over jurisdiction of the matter for the Court of Common Pleas.

155. Counsel for the parents filed an immediate emergency petition for immediate reunification with the Court of Common Pleas on May 14, 2018.

P. MAY 15, 2018 HEARING

156. Judge Tereshko presided over a hearing in the Court of Common Please on May 15, 2018. J.A.M. participated in the hearing with representation by counsel, Debra Moshinski, Esquire, who filed an emergency petition for kinship care.

157. At the hearing, Defendant Langenbach still opposed both reunification of N.W.M. with E.M. and her parents or in the alternative, a kinship placement with J.A.M. Defendant Langenbach also objected to the mere presence of J.A.M. in the proceedings, stating "And I don't know why the grandmother is here as a party to this…She's not a party to this particular portion of the case." Judge Tereshko overruled the objections of Defendant Langenbach and J.A.M. stayed in the room for the proceedings.

158. Defendant Langenbach stated, "We have an objection to the child being moved at the current date if that's what they're suggesting with respect to being reunified with the

parents." She did not specify who "We" were in this statement. Plaintiffs allege she represented the position of herself and her employer, Defendant Defender Association. Thus, even at this late juncture and after the ruling by the Superior Court, the Defendants still desired to keep N.W.M. from her family.

159. City Solicitor Harrison agreed that DHS viewed kinship care with J.A.M. before eventual reunification as in N.W.M.'s best interests. Though she acknowledged that point, she still attempted to relitigate the Petition to Terminate Parental Rights that she filed and the now-overruled Order from Judge Younge.

160. When asked about kinship care with J.A.M. by Judge Tereshko, Defendant Langenbach stated:

> *No, I would only respond with respect to the kinship issue that was raised a little bit. I'm not necessarily opposed to kinship but I'm very concerned about the way in which that would transition, I mean, N.W.M. has been in this home for over two years, it's the only home she knows. It's the only family that she knows, it's the only family that she knows on a day-to-day basis. She hasn't had any visitation with the grandmother for whatever reason that was, still remains that she hasn't visited with her. So, I would be very concerned what if there was a determination that kinship was going to be explored there also be a transition plan be put into place so N.W.M. is traumatized the least amount given the fact that she's going to be removed from the only house that she's known.*

161. Defendant Langenbach's statement "she hasn't had any visitation with the grandmother for whatever reason that was, still remains that she hasn't visited with her" is a gross violation of the Pennsylvania Rules of Professional Conduct Rule 3.3, which holds "a lawyer shall not knowingly: 1) make a false statement of material fact or law to a tribunal or fail

to correct a false statement of material fact or law previously made to the tribunal by the lawyer;" Defendant Langenbach lied to the Court, openly, as she knew well that she had opposed kinship from the outset of this case and at the May 23, 2017 hearing had openly opposed J.A.M. visiting N.W.M., as shown above in paragraph 101-103.

162. Defendant Langenbach later added:

Well, my only response to that would be I'm not faulting the parents or the grandmother with respect to that, but it doesn't change the fact that if N.W.M. is going to transition whether it be to grandmother or any other person she doesn't know there still is a significant impact on her, and changing her environment to strangers, that's my point, not that they haven't done enough...

163. Defendant Langenbach characterized N.W.M.'s family as "strangers," presumably because they were prevented from living with her by Defendant Langenbach, City Solicitor Harrison and Judge Younge for over two years. However, J.L.M., N.M.M., E.M. and J.A.M. and all of their relatives remained a family throughout this ordeal. Her parents, brother, grandmother were never strangers.

164. Defendant Langenbach still demanded further records from the parents in her effort to address their "current capacity for safety." J.L.M. and N.M.M. had full custody of E.M. from July 7, 2016 through this time. No safety concerns in the home were ever raised, reported, or investigated during those 23 months.

Q. DEFENDANT LANGENBACH'S REMOVAL BY COURT ORDER FOR FAILING TO ACT IN THE BEST INTERESTS OF HER CLIENTS

165. Judge Tereshko reviewed the record and removed Defendant Langenbach as Child Advocate and Guardian Ad Litem for N.W.M. in an Order attached at Exhibit "C." In ordering Defendant Langenbach he wrote:

Subsequent to receiving this assignment, this Court undertook the reading of all of the notes of Testimony beginning with the original Adjudicatory Hearing up until and including the Termination of Parental Rights/Goal Change hearing.

Considering this and the records as a whole, this Court finds that the assigned Child Advocate failed to act in the best interest of the Child by standing silently and failing to object or challenge the Trial Court while it denied the Child her right to be placed with her Grandmother in violation of the CPSL (Child Protective Services Law) (citation omitted) and while the Trial Court advanced her plan to judicially coerce a confession from the Parents as to the cause of the Child's injury. This mute acquiescence requires a new Child Advocate be appointed for the Child.

166. Despite the rulings of the Superior Court and Judge Tereshko, Defendant Langenbach still attempted to remain in the matter by filing an appeal of her removal, which was denied.

167. Lisa Visco, Esquire, was appointed Child Advocate for N.W.M. prior to the next and last hearing for N.W.M. and her family.

R. JULY 26, 2018 HEARING

168. At the July 26, 2018 hearing, Judge Tereshko ended the two-plus-year nightmare for N.W.M., E.M. and their families stating:

Although it was a matter of law, I conclude now, and did when I reviewed it, that that finding of child abuse and that finding of dependency was not entitled to any weight. So, starting out from that point, I then determined that there should be a placement with the grandmother, the subject of which was the judicial extortion that there -- there was a violation of law, violation of our own statute, by depriving the grandmother of custody of

these children and allowing the child to remain in the custody of a foster care parent -- by the way, who provided excellent care for this child during that placement.

The child should never have been placed. The contradiction in allowing a male child to return to the parents' home, finding that they had the capacity to provide safety and care for a minor child, while at the same time terminating their parental rights to the female child in this case was a judicial outrage. So, in my humble attempt, I tried to correct that by allowing the child -- and, complying with the law, there being a finding that a family member was ready, willing and able to care for this child and provide safety for this child, I moved the child into placement with the grandmother, and then embarked on a course of allowing the visitation to be facilitated. Having heard today that there are no dependency issues in the home, having found that I give little weight to the prior adjudication of dependency and prior finding of child abuse, I have no course of action but to discharge the dependency petition, award primary and legal custody to mother and father, there being a finding that there are no dependency issues in the home, and a comment that there probably never were dependency issues in the home.

Had they been allowed to present exculpatory evidence, I suggest that the outcome may have been different. I don't know. I would not want to go back and try to recreate that whole period of time. I remember reading a sidebar where a report favorable to the parents by a professional that the Court ordered to conduct an examination -- the Court said, "I won't accept it. It's too favorable to the parents. I want a negative report on these parents." and it went back out, and I guess the Court got what it wanted, but it wasn't in the best interest of the children.

I think judicial process was turned on its head, and I hope today I turned it back right-side, but we'll see. All right.

169. Defendant Langenbach was not present to object. The new Child Advocate, Ms. Visco informed the Court that N.W.M. should be reunified with her parents and brother.

170. After the hearing, N.W.M. went home with her parents and has been with them and her brother since that day.

171. No further involvement by civil authorities in her life have ever occurred. She is now 4 years old.

S. JUDGE YOUNGE & THE COURT OF JUDICIAL DISCIPLINE

172. Subsequent to the Superior Court decision announced in May 2018 and in conjunction with numerous other Complaints, the Judicial Conduct Board investigated Judge Younge's conduct on the bench.

173. The Judicial Conduct Board filed a complaint with the Court of Judicial Discipline of approximately 70 pages, including specific allegations regarding the adjudication of N.W.M.'s matter.

174. Judge Younge denied the allegations and initially intended to proceed to trial. City Solicitor Harrison was listed as a character witness for that trial in pre-trial filings.

175. J.A.M. was listed as a witness for the Judicial Conduct Board.

176. On February 14, 2020, Judge Younge filed an Amended Answer in which she admitted to paragraphs 1-270 of the Amended Complaint filed against her, including all allegations related to the N.W.M. matter. At the time of the filing of this Complaint, Judge Younge awaits a sanction hearing with the Court of Judicial Discipline.

COUNT I – PROFESSIONAL NEGLIGENCE
MINOR PLAINTIFFS, N.W.M. and E.M. v. PATRICE LANGENBACH

177. Paragraphs 1-176 are hereby incorporated by reference as if fully set forth herein.

178. Patrice Langenbach was the appointed Child Advocate for N.W.M. and E.M. and maintained a policy of professional malpractice insurance through her employee, since she represented clients, including N.W.M. and E.M. as an attorney.

179. The negligence of Patrice Langenbach consisted of the following:

a) Failure to properly represent the best interests of N.W.M. and E.M. by negligently and or carelessly not advocating for kinship care with appropriate relatives, including Plaintiff J.A.M.;

b) Failure to properly represent the best interests of N.W.M. and E.M. by negligently and/or carelessly opposing kinship care with appropriate relatives, including Plaintiff J.A.M.;

c) Failure to properly represent the best interests of N.W.M. and E.M. by negligently and or carelessly failing to advocate for family reunification;

d) Failure to properly represent the best interests of N.W.M and E.M. by negligently and/or carelessly actively opposing reunification;

e) Failure to represent N.W.M. and E.M. as zealous advocates;

f) Failure to properly represent the best interests of N.W.M. and E.M. by negligently and or carelessly actively opposing efforts by counsel for their parents to provide medical evidence to explain injuries to N.W.M. as requested by the Court;

g) Failure to properly represent the best interests of N.W.M. and E.M. by negligently and or carelessly opposing parental visitation despite a Superior Court Order allowing for modification of visits after the May 4, 2018 decision;

h) Failure to properly represent the best interests of N.W.M. and E.M. by negligently and or carelessly repeatedly interfering in the efforts of parents to comply with Court-ordered therapy, counseling and parenting programs by contacting these agencies to negatively influence those agencies' interaction with the parents;

i) Failure to properly represent the best interests of N.W.M. and E.M. by interfering with family bonding in negligently and or carelessly forcing the parents to have a second birthday party at an agency location rather than their home even after the Superior Court stayed the order for termination in January 2018;

j) Failure to properly represent the best interests of N.W.M and E.M. by actively advocating against kinship care and reunification such that N.W.M. was denied religious ceremonies and holidays with her family;

k) Failure to properly represent the best interests of N.W.M. and E.M. by acting completely contrary to the CPSL and working to destroy their family bond;

l) Failure to properly represent the best interests of N.W.M. and E.M. had sufficient visits to enhance their sibling bond by negligently and or carelessly opposing more frequent sibling visitation;

m) Failure to properly represent the best interests of N.W.M. and E.M. by colluding with City Solicitor Harrison in efforts both in Court and outside of Court to destroy the family and sibling bonds of N.W.M., E.M. and their parents all in violation of the CPSL.

180. Defendant Langenbach knew or should have known of both the present emotional and long-term psychological consequences of her negligent conduct.

181. As a direct result of Defendant Langenbach's negligent conduct, N.W.M. and E.M. suffered severe mental injuries, which they will endure for the rest of their lives, including

pain, suffering, anguish, embarrassment, humiliation, damage to reputation, and loss of life's pleasures. They will have to expend substantial sums for their care and treatment in the future including psychological treatment and will lose substantial earning potential and capacity over the period of their life.

182. As a direct result of Defendant Langenbach's negligent conduct, N.W.M. and E.M. were unable to form archetypal memories and could not make initial sibling bonds.

183. As a direct result of Defendant Langenbach's negligent conduct, N.W.M. and E.M. missed significant life events with each other and their parents. The lack of these early life events and their inability to be documented and preserved for later review and experience later in life represents significant harm that was a direct result of Defendant Langenbach's negligent conduct. Neither N.W.M. and E.M. will get their first two years together back. N.W.M. will never get her first two Hanukah's back, her naming ceremony back, her daily interaction with her brother back, her daily interaction with her parents back. These lost experiences will only be realized as N.W.M. and E.M. grow older and their impact will be psychologically damaging causing pain and mental anguish and requiring therapy.

WHEREFORE, Minor Plaintiffs, N.W.M. and E.M. demand judgment in their favor and against Defendant Patrice Langenbach in excess of Fifty-Thourand ($50,000) exclusive of prejudgment interest, costs and damages for pre-judgment delay.

COUNT II – PROFESSIONAL NEGLIGENCE
MINOR PLAINTIFFS, N.W.M. and E.M. v. DEFENDANT DEFENDER ASSOCIATION

184. Paragraphs 1-183 are hereby incorporated by reference as if fully set forth herein.

185. Upon information and belief, Defendant Patrice Langenbach was subject to an employment review by the Defender Association prior to her transfer from a separate division of the Defender Association to the Child Advocate Unit.

186. Upon information and belief, the Defender Association determined that Patrice Langenbach had committed some form of employment misconduct.

187. Upon information and belief, this misconduct should have resulted in the termination of Defendant Patrice Langenbach from employment at the Defender Association.

188. Upon information and belief, Defendant Patrice Langenbach was transferred to the Child Advocate Unit in lieu of employment termination.

189. Despite these finding, Defendant Defender Association allowed Defendant Langenbach to remain employed as a Child Advocate, representing the best interests of children assigned to her.

190. Defender Association maintained a policy of malpractice insurance related to its representation of clients, including N.W.M. and E.M.

191. The negligence of Defendant Defender Association, individually and by and through its employees, servants, agents, acting as attorneys, social workers, caseworkers, and others, including Defendant Patrice Langenbach, consisted of the following:

a) Failure to properly represent the best interests of N.W.M. and E.M. by negligently and or carelessly not advocating for kinship care with appropriate relatives, including Plaintiff J.A.M.;

b) Failure to properly represent the best interests of N.W.M. and E.M. by negligently and/or carelessly opposing kinship care with appropriate relatives, including Plaintiff J.A.M.;

c) Failure to properly represent the best interests of N.W.M. and E.M. by negligently and or carelessly failing to advocate for family reunification;

d) Failure to properly represent the best interests of N.W.M and E.M. by negligently and/or carelessly actively opposing reunification;

e) Failure to represent N.W.M. and E.M. as zealous advocates;

f) Failure to properly represent the best interests of N.W.M. and E.M. by negligently and or carelessly actively opposing efforts by counsel for their parents to provide medical evidence to explain injuries to N.W.M. as requested by the Court;

g) Failure to properly represent the best interests of N.W.M. and E.M. by negligently and or carelessly opposing parental visitation despite a Superior Court Order allowing for modification of visits after the May 4, 2018 decision;

h) Failure to properly represent the best interests of N.W.M. and E.M. by negligently and or carelessly repeatedly interfering in the efforts of parents to comply with Court-ordered therapy, counseling and parenting programs by contacting these agencies to negatively influence those agencies' interaction with the parents;

i) Failure to properly represent the best interests of N.W.M. and E.M. by interfering with family bonding in negligently and or carelessly forcing the parents to have a second birthday party at an agency location rather than their home even after the Superior Court stayed the order for termination in January 2018;

j) Failure to properly represent the best interests of N.W.M and E.M. by actively advocating against kinship care and reunification such that N.W.M. was denied religious ceremonies and holidays with her family

k) Failure to properly represent the best interests of N.W.M. and E.M. by acting completely contrary to the CPSL and working to destroy their family bond;

l) Failure to properly represent the best interests of N.W.M. and E.M. had sufficient visits to enhance their sibling bond by negligently and or carelessly opposing more frequent sibling visitation;

m) Failure to properly represent the best interests of N.W.M. and E.M. by colluding with City Solicitor Harrison in efforts both in Court and outside of Court to destroy the family and sibling bonds of N.W.M., E.M. and their parents all in violation of the CPSL.

n) Failure to properly train, manage, and supervise its employees as to the proper representation of clients and proper compliance with the CPSL;

o) Failure to remove Defendant Langenbach as a child advocate based on the conduct outlined above;

p) Failure to properly monitor Defendant Langenbach's activity as described above and

q) Failure to assign an attorney for N.W.M. and E.M. who would not violate their rights under the CPSL;

r) Failure to assign an attorney who was not accused of misconduct by Defendant Defender Association;

s) Failure to review the matter after the appeals to the Pennsylvania Superior Court were filed to ensure that Defendant Langenbach was acting appropriately

192. Defendant Defender Association knew or should have known of both the present emotional and long-term psychological consequences of the negligent conduct of its employees, agents and servants.

193. As a direct result of Defendant Defenders Association's negligent conduct, N.W.M. and E.M. suffered severe mental injuries, which they will endure for the rest of their

lives, including pain, suffering, anguish, embarrassment, humiliation, damage to reputation, and loss of life's pleasures. They will have to expend substantial sums for their care and treatment in the future including psychological treatment and will lose substantial earning potential and capacity over the period of their life.

194. As a direct result of Defendant Defender Association's negligent conduct, N.W.M. and E.M. were unable to form archetypal memories and could not make initial sibling bonds.

195. As a direct result of Defendant Defender Association's negligent conduct, N.W.M. and E.M. missed significant life events with each other and their parents. The lack of these early life events and their inability to be documented and preserved for later review and experience later in life represents significant harm that was a direct result of Defendant Defender Association's negligent conduct. Neither N.W.M. and E.M. will get their first two years together back. N.W.M. will never get her first two Hanukah's back, her naming ceremony back, her daily interaction with her brother back, her daily interaction with her parents back. These lost experiences will only be realized as N.W.M. and E.M. grow older and their impact will be psychologically damaging causing pain and mental anguish and requiring therapy.

WHEREFORE, Minor Plaintiffs, N.W.M. and E.M. demand judgment in their favor and against Defendant Patrice Langenbach in excess of Fifty-Thourand ($50,000) exclusive of prejudgment interest, costs and damages for pre-judgment delay.

COUNT III – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS MINOR PLAINTIFFS, N.W.M. and E.M. v. DEFENDANT PATRICE LANGENBACH

196. Plaintiffs incorporate by reference paragraphs 1 through 195, inclusive, as though same were set forth at length herein.

197. Defendant Langenbach's conduct, as alleged herein, was reckless, extreme and

outrageous and shocks the conscience of society. Her intentional acts to disrupt the bond between her clients, N.W.M. and E.M., and their parents and their family violates the CPSL and natural law.

198. Defendant Langenbach's conduct was undertaken with the intention of, or with Reckless indifference to, causing severe emotional distress in Plaintiffs.

199. As a direct result of Defendant Langenbach's negligent conduct, N.W.M. and E.M. missed significant life events with each other and their parents. The lack of these early life events and their inability to be documented and preserved for later review and experience later in life represents significant harm that was a direct result of Defendant Defender Association's negligent conduct. Neither N.W.M. and E.M. will get their first two years together back. N.W.M. will never get her first two Hanukah's back, her naming ceremony back, her daily interaction with her brother back, her daily interaction with her parents back. These lost experiences will only be realized as N.W.M. and E.M. grow older and their impact will be psychologically damaging causing pain and mental anguish and requiring therapy.

WHEREFORE, Minor Plaintiffs, N.W.M. and E.M. demand judgment in their favor and against Defendant Patrice Langenbach in excess of Fifty-Thousand ($50,000) exclusive of prejudgment interest, costs, damages for pre-judgment delay and punitive damages.

COUNT IV – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
J.A.M. v. DEFENDANT PATRICE LANGENBACH

200. Plaintiffs incorporate by reference paragraphs 1 through 199, inclusive, as though same were set forth at length herein.

201. Plaintiff J.A.M. was a duly qualified kinship care foster parent at all times material.

202. Upon information and belief, Defendant Langenbach acted intentionally to prevent J.A.M. from serving as a kinship resource and engaged in a course of collusion with City Solicitor

Harrison to prevent J.A.M. from serving as a kinship care parent during the pendency of the now-dismissed action against N.W.M.'s parents.

203. Nothing in fact or law would have prevented J.A.M. from being N.W.M's kinship parent during that pending litigation. In fact, she had already served as a kinship resource for E.M.

204. Defendant Langenbach intentionally lied to the Court about J.A.M's visitation of her granddaughter at the May 15, 2018, attempting to portray J.A.M. in a false light and to influence the Court to deny J.A.M. kinship care. Defendant Langenbach herself objected to J.A.M.'s visitation of her granddaughter throughout the course of this case and specifically opposed any visitation of N.W.M., as alleged above in paragraphs 101-103.

205. Defendant Langenbach's intentional acts eliminated J.A.M. from consideration as a kinship resource and prevented her from seeing her granddaughter for most of the almost-26 months that N.W.M. was kept from her family.

206. Defendant Langenbach's conduct, as alleged herein, was reckless, extreme and outrageous and shocks the conscience of society. Her intentional acts to disrupt the bond between her clients, N.W.M. and E.M., and J.A.M. family violates the CPSL and natural law.

207. Defendants Langenbach's conduct was undertaken with the intention of, or with reckless indifference to, causing severe emotional distress in Plaintiff J.A.M.

208. Defendant Langenbach's conduct was beyond all possible bounds of decency.

209. As a direct result of Defendant Langenbach's intentional conduct, N.W.M. and E.M. missed significant life events with J.A.M. J.A.M. will never get the experience of her granddaughter's first two holiday seasons back, nor any other of her first two years of interaction with her infant granddaughter back. These lost experiences cause and will cause in the future

extreme psychological pain and mental anguish and loss of life's pleasures all to Plaintiff's detriment.

WHEREFORE, J.A.M.. demands judgment in her favor and against Defendant Patrice Langenbach in excess of Fifty-Thousand ($50,000) exclusive of prejudgment interest, costs, damages for pre-judgment delay and punitive damages.

Respectfully submitted,

BY:_____
JAY I. EDELSTEIN, ESQUIRE
Attorney for the Plaintiffs

DATE: 3/4/20

VERIFICATION

N.M.M., father of Plaintiffs N.W.M. and E.M., avers that he is a parent and natural guardian on N.W.M. and E.M. and is authorized to bring this complaint on their behalf and that the statements contained in the foregoing COMPLAINT are true and correct to the best of my knowledge, information and belief; and that the statements made in the foregoing COMPLAINT are made subject to the penalties of 18 Pa. C.S.A. §499 relating to unsworn falsifications to authorities.

N.M.M.,
Father of N.W.M and E.M.

Date: 3/4/2020

VERIFICATION

J. L. M. mother of Plaintiffs N.W.M. and E.M., avers that she is a parent and natural guardian on N.W.M. and E.M. and is authorized to bring this complaint on their behalf and that the statements contained in the foregoing COMPLAINT are true and correct to the best of my knowledge, information and belief; and that the statements made in the foregoing COMPLAINT are made subject to the penalties of 18 Pa. C.S.A. §499 relating to unsworn falsifications to authorities.

JLM
J.L.M.,
Mother of N.W.M and E.M.

Date: 3/4/20

VERIFICATION

J.A.M., Plaintiff, avers that the statements contained in the foregoing COMPLAINT are true and correct to the best of my knowledge, information and belief; and that the statements made in the foregoing COMPLAINT are made subject to the penalties of 18 Pa. C.S.A. §499 relating to unsworn falsifications to authorities.

J.A.M., Plaintiff

Exhibit “A”

File #: 125.242
EDELSTEIN LAW, LLP
BY: JAY L. EDELSTEIN, ESQUIRE
IDENTIFICATION NO. 30227
A.J. THOMSON, ESQUIRE
IDENTIFICATION NO. 87844
230 S. Broad Street, Suite 900
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(215) 893-9311

Attorneys for Plaintiffs

N.W.M. and E.M., minors, through their parents and natural guardians, J.L.M. and N.M.M.	**COURT OF COMMON PLEAS PHILADELPHIA COUNTY**
And	
J.A.M., grandmother of N.W.M. and E.M. Plaintiffs	**MARCH TERM, 2020**
	No.
v.	
PATRICE LANGENBACH and DEFENDER ASSOCIATION OF PHILADELPHIA, Defendants	

CERTIFICATE OF MERIT FOR CLAIMS AGAINST PATRICE LANGENBACH, ESQUIRE

I, Jay L. Edelstein, certify that:

X an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and such conduct was a cause in bringing about the harm;

Jay L. Edelstein, Esquire
Attorney for Plaintiffs

File #: 125.242
EDELSTEIN LAW, LLP
BY: JAY L. EDELSTEIN, ESQUIRE
IDENTIFICATION NO. 30227
A.J. THOMSON, ESQUIRE
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Attorneys for Plaintiffs

N.W.M. and E.M., minors, through their parents and natural guardians, J.L.M. and N.M.M.	COURT OF COMMON PLEAS
	PHILADELPHIA COUNTY
And	
J.A.M., grandmother of N.W.M. and E.M. Plaintiffs	MARCH TERM, 2020
	No.
v.	
PATRICE LANGENBACH and DEFENDER ASSOCIATION OF PHILADELPHIA, Defendants	

CERTIFICATE OF MERIT FOR CLAIMS AGAINST DEFENDANT DEFENDER ASSOCIATION OF PHILADELPHIA

I, Jay L. Edelstein, certify that:

X an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and such conduct was a cause in bringing about the harm;

AND/OR

X the claim that this defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and such conduct was a cause in bringing about the harm

Jay L. Edelstein, Esquire
Attorney for Plaintiffs

Exhibit "B"

THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS

IN THE INTEREST OF:	: FAMILY COURT DIVISION
	: JUVENILE BRANCH-DEPENDENCY
N.M., a Minor	: DP-0000856-2016
	:
	:
	:

FINDINGS and ORDER

On May 4th, 2018, our Superior Court filed an Opinion and Order in which it Reversed the prior Permanency Orders and Vacated the Goal Change/Termination decrees. Id.Opinion of 5/4/18 (p.35).

The Court in its Opinion found numerous instances of abuse of discretion and improper conduct of the Trial Judge in judicial . . . "overreaching, failing to be fair and impartial, . . . and a failure to provide due process to the two parents involved." Id at Fn.30. In lieu of citing numerous instances, this new Trial Court[1] will provide Footnote 30, which is a concise summary of these events in the Superior Court Opinion of May 4, 2018, in full:

> We find ourselves constrained to comment as follows: despite record evidence that the trial court allegedly relied upon, the one factor, the elephant in the room, is that the trial judge was and remains the cause of the deteriorated bond between Parents and N.M. in this matter.
>
> The record is replete with attempts by Parents to meet the goals set by the trial judge, however she continued to put up barriers to reunification. As an example, the trial judge stated at the December 8, 2016 hearing that she wanted

1. Assigned to this Court on May 11, 2018 after the prior Trial Court entered an order of Recusal on May 8, 2018.

some testimony as to how the injuries happened. However, at every hearing from March 2017 onward, she refused to allow such testimony, stating that the failure of Parents to appeal her earlier decision with regard to the etiology of N.M.'s injuries was final and could no longer be addressed. When the agency stated that Parents had complied with their goals, the court said, "I'll find that Parents are compliant. It doesn't move the needle for me." She further stated that, "I guess the other side of the conversation is if I leave her [in foster care] maybe I get closer to an answer as to what happened instead of moving her to grandmom. ... So, I'm not going to consider kinship care." When the agency determined that kinship placement was available and appropriate, the trial court ruled in May of 2017 that grandparent visitation with N.M. is immediately suspended; it is not in N.M.'s continued best interests to explore placement in kinship care. In short, despite the goals of the Child Protective Services Law, the trial judge seems to have done everything in her power to alienate these parents from their child, appears to have a fixed idea about this matter and, further, she prohibited evidence to be introduced that might have forced her to change her opinion.

While this court must take and does take the issue of abuse of a child very seriously, the fact that a trial judge tells parents that unless one of them "cops to an admission of what happened to the child" they are going to lose their child, flies in the face of not only the CPSL, but of the entire body of case law with regard to best interests of the child and family reunification. We find that the record herein provides example after example of overreaching, failing to be fair and impartial, evidence of a fixed presumptive idea of what took place, and a failure to provide due process to the two parents involved. Finally, the most egregious failure in this matter is the refusal to allow kinship care, despite the paternal grandmother being an available and approved source for same. The punishment effectuated by the trial judge was, at best, neglectful and, at worst, designed to affect the bond between Parents and N.M. so that termination would be the natural outcome of the proceedings. This is an extremely harsh penalty for parents who have complied in every way with the requirements of the CPSL.

Subsequent to receiving this assignment, this Court undertook a reading of all the Notes of Testimony beginning with the original Adjudicatory hearing up until and including the Termination of Parental Rights/Goal Change hearing.

Considering this, and the record as a whole, this Court finds that the assigned Child Advocate failed to act in the best interest of the Child by standing silently and failing to object or challenge the Trial Court while it denied the Child her right to be placed with her Grandmother in violation of the CPSL (Child Protective Services Law) (citation omitted) and while the Trial Court advanced her plan to judicially coerce a confession from the Parents as to the cause of the Child's injury. This mute acquiescence requires a new Child Advocate be appointed for the Child.

Therefore, it is hereby Ordered this 24th day of May, 2018, that the appointment of the current Child Advocate is Vacated and the matter referred to Family Court Administration for appointment of a new Child Advocate. This is to be done within seven (7) days. Copies of all Pleadings, Orders and Notes of Testimony to be provided to the new Child Advocate within twenty (20) days of the Appointment.

Notice is given that a Permanency Review hearing is scheduled before this Court on July 26, 2018, at 10:30 A.M., in Family Court, Courtroom 5B.

BY THE COURT:

Tereshko

ALLAN L. TERESHKO, Sr., J.

Exhibit "C"

J-A01011-18
J-A01012-18
J-A01046-18
J-A01047-18

2018 PA Super 119

IN THE INTEREST OF: N.M., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: J.C., MOTHER	:	
	:	No. 154 EDA 2017

Appeal from the Order December 8, 2016
In the Court of Common Pleas of Philadelphia County Family Court at
No(s): CP-51-DP-0000856-2016,
FID: 51-FN-000792-2016

*****

IN THE INTEREST OF: N.M., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: N.M., FATHER	:	
	:	No. 190 EDA 2017

Appeal from the Order Entered December 8, 2016
In the Court of Common Pleas of Philadelphia County Juvenile Division at
No(s): CP-51-DP-0000856-2016

*****

IN THE INTEREST OF: N.W.M., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: N.M., FATHER	:	
	:	No. 3714 EDA 2017

Appeal from the Decree Entered October 26, 2017

In the Court of Common Pleas of Philadelphia County Family Court at
No(s): CP-51-AP-0000573-2017,
CP-51-DP-0000856-2016

*****

IN THE INTEREST OF: N.W.M., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: J.C., MOTHER	:	No. 3715 EDA 2017

Appeal from the Decree Entered October 26, 2017
In the Court of Common Pleas of Philadelphia County Family Court at
No(s): CP-51-AP-0000573-2017,
CP-51-DP-000856-2016

BEFORE: LAZARUS, J., OTT, J., and PLATT*, J.

OPINION BY LAZARUS, J.: **FILED MAY 04, 2018**

J.C. (Mother) and N.M. (Father) (collectively, Parents) appeal from the trial court's permanency orders[1] designating reunification with Parents or guardian as the current placement goal, declining to reunify Parents with their

[1] We have *sua sponte* consolidated Mother's and Father's appeals, 154 EDA 2017 & 190 EDA 2017 and 3714 EDA 2017 & 3715 EDA 2017, as they are taken from the same orders and involve the same issues. ***See*** Pa.R.A.P. 513 (Consolidation of Multiple Appeals).

*Retired Senior Judge Assigned to the Superior Court.

minor daughter, N.M. (born 2/16), or place N.M. in kinship care, and maintaining the status quo with N.M. in foster care and mandating that N.M. stay in foster care "until there's a determination as to the cause of [N.M.'s] injury."[2] Parents also appeal from the trial court's subsequent decrees changing the goal to adoption and involuntarily terminating[3] their parental

---

[2] N.T. Permanency Review Hearing, 12/8/16, at 34.

[3] As noted in the procedural history of this opinion, on October 26, 2017, the trial court changed the goal from reunification to adoption and involuntarily terminated Parents' parental rights to N.M. in response to DHS's May 23, 2017 involuntary termination petition. Parents have appealed that decision, which we have chosen to consolidate with this matter. ***See infra*** n.1; ***see also In re: N.M.***, 3714 EDA 2017 & 3715 EDA 2017. Notably, a court-ordered goal change is not a condition precedent to the filing of a petition to terminate parental rights. ***See In re Adoption of S.E.G.***, 901 A.2d 1017 (Pa. 2006). On January 18, 2018, this Court stayed the order changing the goal to adoption and terminating Parents' rights. Our Court also reinstated parental visitation until resolution of the current appeal.

We also recognize that the trial court had jurisdiction to address the petition to terminate Parents' parental rights while the appeals of the current permanency review orders were pending. The appeals of the permanency review orders addressed Parents' rights to reunification with N.M. and a change of her placement to kinship care, which is a separate issue from whether Parents' rights should be terminated. ***See*** Pa.R.A.P. 1701(c) ("Where only a particular item, claim or assessment adjudged in the matter is involved in an appeal, . . . the appeal . . . shall operate to prevent the trial court . . . from proceeding further with only such item, claim or assessment, unless otherwise ordered by the trial court or other government unit or by the appellate court or a judge thereof as necessary to preserve the rights of the appellant.").

rights to N.M.[4] After careful and deliberate consideration, we reverse and vacate.

On April 12, 2016, seven-month-old N.M. and her then-two-year-old brother, E.M., were removed from Parents'[5] care based on allegations of physical abuse to N.M. Mother took N.M. several times to the pediatrician when N.M. exhibited signs of increased fussiness. On the first occasion, the morning of April 6, the pediatrician diagnosed N.M. with an ear infection and prescribed an antibiotic. Immediately following that doctor's appointment, Mother was at a play date with N.M. and felt a "popping on [N.M.'s] side." Mother returned to the pediatrician's that afternoon; the doctor could not feel the "popping" and told Mother the fussiness was from N.M.'s ear infection. When N.M.'s heightened fussiness failed to decrease that evening, Father took N.M. back to the pediatrician the next morning, April 7; the pediatrician ordered an outpatient chest x-ray. Parents took N.M. to the Children's

---

[4] Due to the interrelated procedural history as well as the fact that the parties and issues are the same in the matters, we have chosen to consolidate Parents' permanency appeals and termination appeals. ***See In the Interest of M.T.***, 101 A.3d 1163 (Pa. Super. 2014) (where goal change issues and termination issues in separately filed appeals were interrelated and implicated trial court's assessment of sufficiency and weight of evidence, our Court properly addressed issues together).

[5] Mother is a nurse practitioner at the Hospital of the University of Pennsylvania; Father is a graphic designer.

Hospital of the University of Pennsylvania (CHOP) that same day; x-ray results yielded mildly displaced acute fractures of her sixth and seventh left posterior ribs.[6] N.M. was admitted to CHOP for a magnetic resonance imaging (MRI) and consultation with a team of doctors. The CHOP medical team identified the primary concern as non-accidental trauma and determined that N.M.'s injuries were not likely due to any genetic or metabolic causes.

A report was filed with the Philadelphia Department of Human Services (DHS) on the day of N.M.'s admission to CHOP, April 7, 2016. N.M. was discharged from CHOP on April 12, 2016. On July 7, 2016, the court held an adjudicatory hearing where Natalie Jenkins (a DHS social worker), Mother, and Dr. Natalie Stavas (a CHOP pediatrician with a concentration in child abuse cases) testified. Doctor Stavas opined that nothing was provided to the CHOP team that would explain N.M.'s rib fractures, that it would be very unlikely that E.M., a toddler and N.M.'s older brother, would be able to inflict the force necessary to fracture N.M.'s ribs, and that blood tests and lab work did not

---

[6] At a follow-up appointment on April 21, 2016, it was noted that "[N.M.'s] repeat skeletal survey . . . show[ed] healing of the prior known fractures *as well as likely nondisplaced healing fracture of the posterior left fifth rib* ([that] would be consistent with the same time frame as the previously identified fractures), more visible now on follow-up imaging in the setting of ongoing healing." CHOP Visit Summary, 4/21/16.

uncover any genetic disorders to explain the fractures.[7] Social workers testified that Parents, individually, gave consistent stories with regard to the events leading up to discovering N.M.'s injuries, noting that Parents are the sole caregivers for N.M., the family home was extremely safe, and E.M. is never around N.M. unsupervised. Finally, Mother testified that she had no idea how N.M.'s injuries occurred, but that E.M. would often forcefully run into N.M.'s back when Mother was holding N.M. in her arms. ***Id.*** at 136.

At the conclusion of the hearing, N.M. was adjudicated dependent[8] based on the two unexplained acute rib fractures diagnosed at CHOP; she was placed in the custody of DHS. DHS determined the abuse allegations to be founded and identified Parents as the perpetrators.[9]

---

[7] Interestingly, Dr. Stavas testified that genetic testing showed a variant or mutation that was "unlikely to contribute to the health of [N.M.'s] bones [but she] could not make a definitive statement as to whether or not it contributed to her fractures." N.T. Adjudicatory Hearing, 7/7/16, at 53. Doctor Stavas, however, did testify definitively that N.M. does not have osteogenesis imperfect (OI), which is also known as brittle bone disease, a genetic disorder that mainly affect the bones and results in bones that break easily.

[8] Once a child has been adjudicated dependent, the issue of custody and continuation of foster care are determined according to a child's best interest. ***R.P. v. L.P.***, 957 A.2d 1205 (Pa. Super. 2008).

[9] As part of a dependency adjudication, a court may find a parent to be the perpetrator of child abuse, as defined by the Child Protective Services Law (CPSL). ***In re L.Z.***, 111 A.3d 1164, 1176 (Pa. 2015). The CPSL defines "child abuse" in relevant part as follows:

N.M. was placed in foster care and E.M. was placed in approved kinship care with his paternal grandmother, pursuant to an emergency protective custody order. Importantly, no aggravated circumstances were found. The trial court ordered Parents each to submit to a behavioral health evaluation, complete parenting classes and attend individual therapy. On the same date, E.M. was adjudicated dependent with supervision[10] and he was **reunified** with Parents.

> The term "child abuse" shall mean intentionally, knowingly or recklessly doing any of the following:
>
> (1) Causing bodily injury to a child through any recent act or failure to act.
>
> * * *
>
> (5) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

23 Pa.C.S. § 6303(b.1)(1), (5). The CPSL defines "child" as "[a]n individual under 18 years of age." 23 Pa.C.S. § 6303(a). "[B]odily injury" is defined under the CPSL as "[i]mpairment of physical condition or substantial pain." ***Id.*** at § 6303(a).

[10] Pursuant to 42 Pa.C.S. § 6341(a):

> [A] court is empowered . . . to make a finding that a child is dependent if the child meets the statutory definition by clear and convincing evidence. If the court finds that the child is dependent, then the court may make an appropriate disposition of the child to protect the child's physical, mental and moral welfare, *including allowing the child to remain with the parents subject to supervision*, transferring temporary legal custody to a relative or a private or public agency, or transferring custody to the juvenile court of another state.

On August 18, 2016, at an initial permanency review hearing, the court discharged E.M.'s dependency petition and supervision, finding that Parents had the protective capacity to care for E.M. and that E.M. was safe in Parents' home. N.M., however, remained in foster care; the court refused Parents' request to have N.M. placed in kinship care. The court further ordered that Parents have supervised visits with N.M. and that DHS refer Parents for an "expedited" parenting capacity evaluation.

On December 8, 2016, the court held a permanency review hearing. At the hearing, the court acknowledged that Parents had fully complied with their service plan objectives. In coming to its decision to keep N.M. in foster care and not reunite her with Parents or place her in kinship care, the court made the following statements on the record:

> So, you know what, if we're going to stay stuck, we're going to stay stuck. **Because either someone has to cop to it or there has to be a plausible explanation with the significance of the injuries to [N.M.] because I'm telling you that testimony by the doctor was so damning.** She sealed any doubt, any variable that it could be anything but abuse.
>
> * * *

---

42 Pa.C.S. § 6351(a). ***See In re D.A.***, 801 A.2d 614, 617 (Pa. Super. 2002) (en banc) (emphasis added).

> So, I don't know how we get over this hurdle. I'm definitely not going to allow supervised visits in the parent's home because I need line of sight, line of hearing. As far as I'm concerned . . . this is still an open investigation.[11] **Until we get some closure about how this happened, we're not going to get beyond this. I can't look the other way on that. I just can't. . . . [U]nless somebody is willing to say, "This is how [N.M.] got injured," [N.M.] can't come back to that home because I can't risk it a second time and a worse injury.** I can't do it. And we don't have any explanations.
>
> So, I don't know what you want me to do. I'm open to any suggestions to try to move this forward to reunification, but that's the bottom line. We can talk about services and how parents are fully compliant. **I'll find that the parents are fully compliant. It doesn't move the needle for me**. We came in because a baby was injured. And the thing that brought this case into [court] still exist[s] with no explanation. **Can't do reunification if that's the case.**
>
> * * *
>
> We had the child abuse hearing. At some point in time if it's going to move the needle[,] I would allow the doctor to testify today. I would. I would. I absolutely would.

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[11] To date, no criminal proceedings have been instituted against Parents regarding the abuse to N.M. Despite the trial judge's statement in her August 10, 2017 opinion that at the July 7, 2016 adjudicatory hearing "the Court found child abuse aggravated circumstances existed," in fact, DHS did not pursue a finding of aggravated circumstances. ***See*** N.T. 7/7/16, at 17 ("It is not my expectation to . . . pursue aggravated circumstances at this time."); ***id.*** at 19 ("I'm not requesting the aggravating finding."). Under 42 Pa.C.S. § 6315(e)(2), "*If the county agency or the child's attorney alleges the existence of aggravated circumstances and the court determines that the child has been adjudicated dependent, the court shall then determine if aggravated circumstances exist.*"). Thus, it is a condition precedent that either the county agency or child's attorney allege aggravating circumstances before a trial court can make such a determination.

* * *

> And as the [c]ourt I will be open and receptive to anything you bring for me. That's why I'm not saying no if they had a geneticist come in and say, "This is where we are."
>
> I'm willing to receive that, but, until such time I can't do anything because the bottom line is I have to ensure the child's safety.

* * *

> **I guess the other side of the conversation is if I leave her [in foster care] maybe I get closer to an answer as to what happened instead of moving her to grandmom. . . . So, I'm not going to consider kinship care.**

N.T. Permanency Hearing, 12/8/16, at 14-16, 20, 22, 29-30 (emphasis added).[12] Mother and Father filed timely notices of appeal and court-ordered Pa.R.A.P. 1925(b) concise statements of errors complained of on appeal.

While the permanency matter was pending on appeal, the trial court held further hearings in the matter on March 9, 2017, May 23, 2017, July 11, 2017 and October 26, 2017. At the March 2017 hearing, Attorney Marc Freeman entered his appearance as co-counsel[13] for Mother, ***see*** N.T. Dependency Hearing, 3/9/17, at 5, and attempted to admit two expert medical reports to explain N.M.'s injuries. ***Id.*** at 8. **The court, however, would not permit Mother to have two attorneys,** ***id.*** at 10, **found Attorney**

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[12] Parents continued to engage in both individual and couple's therapy. Parents successfully graduated from Family School in July 2017.

[13] Claire Leotta, Esquire, was counsel of record for Mother.

Freeman's conduct "disrespectful [a]nd a little arrogant," *id.* at 13, **refused to take any testimony in the case, *id.*** at 19, **and ordered the parties to work on how evidence will be presented in the case.** (Emphasis added).

At the May 23, 2017 hearing, Attorney Freeman was listed as counsel for Mother. With regard to permanency matters, the court chose to only hear evidence regarding "where N.M. is, . . . is she receiving services, [and] was she last seen in 30 days." N.T. Hearing, 5/23/17, at 26. **The court again refused to accept from Attorney Freeman the reports and curriculum vitae of two doctors regarding a non-abusive explanation for N.M.'s injuries.** ***Id.*** at 41. The focus of the court's time was spent on addressing outstanding motions in the case. ***Id.*** at 26-27.[14] Ultimately, the court ruled that: (1) any grandparent visitation with N.M. is immediately suspended; (2) it is not in N.M.'s continued best interests to explore placement in kinship care; and (3) supervised, line-of-sight parental visitation was continued. ***Id.*** at 35, 37-39, 42. With regard to kinship care, the court determined it was not to be explored despite DHS social worker Molly McNeil testifying that she had conducted a full investigation on kinship care for N.M., that DHS had

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[14] Specifically, the court referenced a motion to remove an attorney from the City Solicitor's Office from the case. The court, however, determined that it did not have jurisdiction over the matter because it was brought in an improper forum.

approved paternal grandmother as a willing kinship provider, and that DHS would explore her as a kinship provider. ***Id.*** at 31-32. Following the hearing, DHS filed petitions to change the goal to adoption and to involuntarily terminate Parents' rights to N.M.[15]

At the July 11, 2017 hearing, the court ruled on several motions from the prior listing. Specifically, the court denied the request to have N.M. seen by an out-of-state physician for additional medical testimony in the case, noting that the child abuse finding, which was substantiated by a doctor at the July 2016 adjudicatory hearing, was never challenged by Parents. The court also denied a request to have witnesses appear via video feed. The court excluded Parents' expert reports from Doctors Haluck and Mack,[16] again

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[15] On August 17, 2017, our Court denied Parents' motion to stay the termination hearing until resolution of their permanency appeals. However, on December 1, 2017, our Court granted Parents' motion to stay the termination and goal change orders and reinstated Parents' visitation pending resolution of the instant matter. ***See*** Order, Nos. 3714 & 3715 EDA 2017 (filed 12/1/17). Our Court further ordered that reinstated visitation begin no later than the week of January 29, 2018, permitting Parents four hours of supervised visitation at the agency per week, modifiable by agreement of the parties. Order, Nos. 3714 & 3715 EDA 2017 (filed 1/18/18).

[16] At the hearing, Attorney Freeman told the trial judge that he had a radiologist and endocrinologist to offer testimony in the matter. N.T. Hearing, 7/11/17, at 43. The court prevented the experts from testifying, noting that the child abuse finding was final and that the only new evidence the court would allow in would be something "that could not have been obtained at the time of the adjudicatory hearing in July 2016 . . . [and would be something]

noting that the child abuse finding was final and had not been timely challenged.[17] Finally, the court denied Parents' motion to quash DHS's subpoena for their treatment records, finding that Parents had signed consent forms waiving any potential psychotherapist-patient privilege. In concluding the hearing, the court pronounced the following:

> Let me just say this and let me be **clear**: this matter is going to be heard for a contested goal change termination on 10/26/2017. That means **by September 26, 2017, there should be an exchange of all exhibits amongst parties that are to be – that will be used in anticipation of the next court date. That would also include witness lists. So if there's experts, CVs, whatever you need should be produced to all parties by September 26th** and that gives you 30 days in anticipation of the next court date.

N.T. Hearing, 7/11/17, at 59 (emphasis in original and emphasis added).

On October 26, 2017, the court held a goal change/termination hearing, after which it granted DHS' petitions and involuntarily terminated Parents' rights to N.M. pursuant to sections 2511(a)(1), (2), (5), (8) and (b) of the Adoption Act.[18] The court largely based its decision to terminate under section 2511(a) on the fact that Parents had refused to comply with the service plan objective of receiving appropriate mental health treatment to "address [and]

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unusual and [that] nobody could have foreseen that that would have been the case in July 2016." ***Id.*** at 45.

[17] ***See L.Z., supra*** n.7 (finding of child abuse in dependency proceeding can be appealed to Superior Court).

[18] 23 Pa.C.S. §§ 2101-2910.

understand the reason or cause of N.[]M.'s physical injuries." Trial Court Opinion, 2/9/18, at 7. On November 17, 2017, Parents filed timely notices of appeal and Pa.R.A.P. 1925(a)(2)(i) concise statements of errors complained of on appeal.

On appeal from the permanency orders, Mother and Father present the following issues for our consideration:

> (1) Whether the trial court erred and/or abused its discretion by entering an order on December 8, 2016 denying Mother & Father reunification with N.M.? More specifically, the trial court abused its discretion as substantial, sufficient and credible evidence was presented at the time of trial indicating Mother [and] Father were fully compliant with all of their goals and the Court indicated that finding on the record, yet ordered that the case remain "status quo".
>
> (2) Whether the trial court erred and/or abused its discretion by entering an order on December 8, 2016 denying counsel's repeated requests to have N.M. moved to a kinship care home rather than continue to reside in general foster care? More specifically, the trial court abused its discretion by not following State [and] Federal Laws regarding kinship care placement of children when substantial, sufficient and credible evidence was presented to the Court indicating that an approved family member was ready and available to care for N.M.
>
> (3) Whether the trial court erred and/or abused its discretion by violating the protections of the Due Process Clause as guaranteed by both the Pennsylvania Constitution and the United States Constitution by halting the stated goal of reunification, without appropriate notice to Mother and Father of the Court's change in the Permanency Plan, thus denying Mother and Father notice and an opportunity to prepare and be heard on such issue?

On appeal from the goal change/termination decrees, Parents present the following issues for our consideration:

> (1) Whether the [t]rial [c]ourt erred and/or abused its discretion by denying Parents[']' Motion to Recuse Judge Younge?
>
> (2) Whether the [t]rial [c]ourt erred and/or abused its discretion when it excluded testimony from the Parents' licensed therapists?
>
> (3) Whether the [t]rial [c]ourt erred and/or abused its discretion when it found clear and convincing evidence that the individual and couples therapy in which Parents were engaged in failed to comply with the Permanency Plan?
>
> (4) Whether the [t]rial [c]ourt erred and/or abused its discretion when it excluded evidence that N.[]M.'s sibling[,] E.M.[,] had been returned to Parents' custody and E.M. had been deemed safe in Parents' care?
>
> (5) Whether the [t]rial [c]ourt erred and/or abused its discretion by entering an order that no family members be explored for N.[]M.'s placement, despite counsel's repeated requests to have N.[]M. moved to approved kinship care home rather than continue to reside in general foster care?
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> (6) Whether the [t]rial [c]ourt erred and/or abused its discretion in finding DHS met its burden by clear and convincing evidence that Parental rights to N.[]M. should be involuntarily terminated and the goal changed[19] to adoption?

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[19] We have described our standard and scope of review in dependency cases as follows:

> [W]e must accept the facts as found by the trial court unless they are not supported by the record. Although bound by the facts, we are not bound by the trial court's inferences, deductions, and

Appellants' Briefs, at 9.

Before reviewing the merits of Parents' issues, we must determine whether we have jurisdiction over the appeals in the permanency matter. In particular, we must examine whether the permanency review orders of December 8, 2016, are appealable orders. ***See Kulp v. Hrivnak***, 765 A.2d 796, 798 (Pa. Super. 2000) ("[W]e lack jurisdiction over an unappealable order, it is incumbent on us to determine, *sua sponte* when necessary, whether the appeal is taken from an appealable order."). It is well-settled that, "[a]n appeal lies only from a final order, unless permitted by rule or statute." ***Stewart v. Foxworth***, 65 A.3d 468, 471 (Pa. Super. 2013). Generally, a final order is one that disposes of all claims and all parties. ***See*** Pa.R.A.P. 341(b). Moreover, with regard to dependency matters, "[a]n order

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> conclusions therefrom; we must exercise our independent judgment in reviewing the court's determination as opposed to the findings of fact, and must order whatever right and justice dictate. We review for abuse of discretion. Our scope of review, accordingly, is of the broadest possible nature. It is this Court's responsibility to ensure that the record represents a comprehensive inquiry and that the hearing judge has applied the appropriate legal principles to that record. Nevertheless, we accord great weight to the court's fact-finding function because the court is in the best position to observe and rule on the credibility of the parties and witnesses.

In re D.P., 972 A.2d 1221, 1225 (Pa. Super. 2009) (quoting ***In re C.M.***, 882 A.2d 507, 513 (Pa. Super. 2005)). In considering a goal change, "the best interests of the child, and not the interests of the parent, must guide the trial court, and the parent's rights are secondary." ***Id.*** at 1227 (citing ***In re A.K.***, 936 A.2d 528, 532-533 (Pa. Super. 2007)).

granting or denying a status change, as well as an order terminating or preserving parental rights, shall be deemed final when entered." ***In re H.S.W.C.-B.***, 836 A.2d 908, 910 (Pa. 2003).

Here, the trial court did not grant or deny a status change; the goal remained reunification throughout and Parents never asked for it to be changed. Moreover, the instant permanency orders neither affected visitation nor custody. ***See id.*** (noting that all orders dealing with visitation or custody, with exception of enforcement or contempt proceedings, are final when entered.). Rather, the sole request Parents made at the permanency review hearing was to remove N.M. from foster care and place her in kinship care, which amounts to a request to change placement.[20] That request was denied.

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[20] Kinship care under 62 P.S. § 1303(b) is a subset of foster care in which the care provider already has a close relationship to the child. In kinship care, legal custody of the child remains with the agency, and the agency places the minor child with an appropriate caregiver, who is typically a family member. The court may place children with a foster family, although there might be willing relatives, where foster care is in the best interests of the children or aggravated circumstances exist. The goal of preserving the family unit cannot be elevated above all other factors when considering the best interests of children, but must be weighed in conjunction with other factors. Section §1303(b) of the Kinship Care Program provides as follows:

> (b) Placement of children.— If a child has been removed from the child's home under a voluntary placement agreement or is in the legal custody of the county agency, the county agency shall give first consideration to placement with relatives. The county agency shall document that an attempt was made to place the child with

In ***In re H.S.W.C.-B.***, ***supra***, the Supreme Court granted review to determine whether an order denying a petition to change a family goal from reunification to adoption and to terminate parental rights was final, and therefore, appealable. In that case, two children were adjudicated dependent and placed in foster care. The court approved reunification as the goal, provided mother continued to make efforts toward satisfying a family service plan. After two years of permanency review hearings and mother's minimal gains toward achieving her service goals, CYS filed petitions to change the goal from reunification to adoption and to involuntarily terminate mother's parental rights. The court denied the petitions, without prejudice. CYS appealed the decision to our Court; the trial court stayed all proceedings below until the appeal was decided. Our Court quashed CYS's appeal, holding that the order merely maintained the *status quo*, was not final, and, thus, was unappealable. On appeal, the Supreme Court noted that, generally, a change of placement goal is not appealable. However, the Court also recognized that orders that are not status-changing, such as orders denying parental

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> a relative. If the child is not placed with a relative, the agency shall document the reason why such placement was not possible.

62 P.S. § 1303(b).

termination, have been regularly reviewed on appeal. ***See In the Interest of A.L.D.***, 797 A.2d 326 (Pa. Super. 2002) (all decrees in termination of parental rights cases, whether granting them or denying them, are considered final, appealable orders).[21] Unlike the mother in ***H.S.W.C.-B.***, who requested a *goal* change, Parents here requested a placement change – from foster care to kinship care. Thus, we do not find ***H.S.W.C.-B.*** controlling.

Case law has supported the argument, however, that certain interlocutory, non-final permanency orders are appealable as collateral order under Pa.R.A.P. 313(b). ***Compare In re: N.E.***, 787 A.2d 1040 (Pa. Super. 2001) (collateral order where DHS appealed from order requiring it pay portion of dependent child's dental bills); ***In re: Tameka M.***, 580 A.2d 750 (Pa. 1990) (CYS's appeal from order requiring it reimburse foster family for expenses in sending child to private preschool is collateral order) ***with In re H.K.***, 161 A.3d 331 (Pa. Super. 2017) (right to participate and present evidence during dependency proceedings is not separate from, or collateral

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[21] In ***H.S.W.C.-B.***, ***supra***, the Court noted that "[m]aintaining the status quo[, by denying goal changes,] could put the needs and welfare of a child at risk." ***Id.*** at 911. "Foster care may be the *status quo*, but to 'allow these children to languish in foster care . . . not only defies common sense, but it is contradictory to the applicable law and to the best interest of the children.'" ***In re R.T.***, 778 A.2d 670, 681 (Pa. Super. 2001). In ***R.T.***, parents had been provided services by CYS for "eight fruitless years," and had been "[unable] or refus[ed] to complete the goals on their Placement Plan Amendments." ***Id.*** at 682. Again, the *status quo* in these cases involved goals, not placement.

to, those proceedings); ***In re J.S.C.***, 851 A.2d 189 (Pa. Super. 2004) (order granting parent's petition to compel visitation not collateral order where CYS did not possess "right" to prevent parent from visiting with child).

However, to be considered a collateral order, the order must be separable from and collateral to the main cause of action, where the right involved is too important to be denied review, and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost. ***See*** Pa.R.A.P. 313(b). Here, we do not find that the instant permanency order is separable from or collateral to the main cause of action where the only request was to change the placement of N.M. (from foster care to kinship care) and where the placement remained the same. Moreover, review of that decision will not be irreparably lost if we postponed it at this point.

We conclude, however, that because the trial court has terminated Parents' parental rights to N.M., the entire record from the permanency hearings, including that from the December 8, 2016 hearing, is now reviewable on appeal from the court's termination decrees. ***See In the Interest of A.L.D.***, ***supra*** (all decrees in termination of parental rights cases are considered final, appealable orders). Procedurally, the entry of the orders terminating Parents' rights to N.M. acts to finalize the interlocutory

permanency review orders. Therefore, we will address the merits of the claims raised in these consolidated appeals.

In their first two issues in the permanency appeals, Parents contend that the court erred by not reunifying them with N.M. and in denying their repeated requests to have N.M. placed into kinship care.

At permanency hearings,[22] the court is required to comply with 42 Pa.C.S. § 6351(f), which designates the appropriate matters to be determined at such hearings, including:

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[22] Under section 6351:

> (e) Permanency hearings.
>
> (1) The court shall conduct a permanency hearing for the purpose of determining or reviewing the permanency plan of the child, the date by which the goal of permanency for the child might be achieved and whether placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child. In any permanency hearing held with respect to the child, the court shall consult with the child regarding the child's permanency plan, including the child's desired permanency goal, in a manner appropriate to the child's age and maturity. If the court does not consult personally with the child, the court shall ensure that the views of the child regarding the permanency plan have been ascertained to the fullest extent possible and communicated to the court by the guardian ad litem under section 6311 (relating to guardian ad litem for child in court proceedings) or, as appropriate to the circumstances of the case by the child's counsel, the court-

(1) The continuing necessity for and appropriateness of the placement.

(2) The appropriateness, feasibility and extent of compliance with the permanency plan developed for the child.

(3) The extent of progress made toward alleviating the circumstances which necessitated the original placement.

(4) The appropriateness and feasibility of the current placement goal for the child.

(5) The likely date by which the placement goal for the child might be achieved.

(5.1) Whether reasonable efforts were made to finalize the permanency plan in effect.

(6) Whether the child is safe.

* * *

(9) If the child has been in placement for at least 15 of the last 22 months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's parent, guardian or custodian or to preserve and reunify the family need not be made or continue to be made, whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process and approve a qualified family to adopt the child unless:

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appointed special advocate or other person as designated by the court.

42 Pa.C.S. § 6351(e)(1). The court shall conduct permanency review hearings "[w]ithin six months of the date of the child's removal from the child's parent[;] or each previous permanency hearing until the child is returned to the child's parent, guardian or custodian or removed from the jurisdiction of the court." ***Id.*** at (e)(3)(i)(A). The court shall also conduct permanency hearings "[w]ithin 30 days of a petition alleging that the hearing is necessary to protect the safety or physical, mental or moral welfare of a dependent child." ***Id.*** at (e)(3)(ii)(D).

> (i) the child is being cared for by a relative best suited to the physical, mental and moral welfare of the child;
>
> (ii) the county agency has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or
>
> (iii) the child's family has not been provided with necessary services to achieve the safe return to the child's parent, guardian or custodian within the time frames set forth in the permanency plan.
>
> * * *
>
> (11) If the child has a sibling, whether visitation of the child with that sibling is occurring no less than twice a month, unless a finding is made that visitation is contrary to the safety or well-being of the child or sibling.
>
> (12) If the child has been placed with a caregiver, whether the child is being provided with regular, ongoing opportunities to participate in age-appropriate or developmentally appropriate activities. In order to make the determination under this paragraph, the county agency shall document the steps it has taken to ensure that:
>
> (i) the caregiver is following the reasonable and prudent parent standard; and
>
> (ii) the child has regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities. The county agency shall consult with the child regarding opportunities to engage in such activities.

Id. at (f) (emphasis added). Moreover, based upon the determinations made under subsection (f) and all relevant evidence presented at the hearing, the court shall determine one of the following:

> **(1)** If and when the child will be returned to the child's parent, guardian or custodian in cases where the return of the child is best

> suited to the safety, protection and physical, mental and moral welfare of the child.
>
> **(2)** If and when the child will be placed for adoption, and the county agency will file for termination of parental rights in cases where return to the child's parent, guardian or custodian is not best suited to the safety, protection and physical, mental and moral welfare of the child.
>
> **(3)** If and when the child will be placed with a legal custodian in cases where the return to the child's parent, guardian or custodian or being placed for adoption is not best suited to the safety, protection and physical, mental and moral welfare of the child.
>
> **(4)** If and when the child will be placed with a fit and willing relative in cases where return to the child's parent, guardian or custodian, being placed for adoption or being placed with a legal custodian is not best suited to the safety, protection and physical, mental and moral welfare of the child.

Id. at (f.1). On the basis of the determination made under subsection (f.1), the court shall order the continuation, modification or termination of placement or other disposition which is best suited to the safety, protection and physical, mental and moral welfare of the child. ***Id.*** at (g).

Instantly, N.M. was removed from Parents' care on April 12, 2016, and adjudicated dependent on July 7, 2016. She had been in placement for 5 months at the time of the December 2016 placement hearing and for more than 15 months at the time of the October 2017 termination/goal change hearing. N.M. is now two years old. While a CHOP pediatrician testified at the adjudicatory hearing in July 2016 that nothing was provided to the CHOP team that would explain N.M.'s rib fractures, Mother did testify that E.M. would often forcefully run into N.M.'s back when Mother was holding N.M. in her

arms. Doctor Stavas testified that it would be very *unlikely* that E.M., a toddler, would be able to impart the necessary force to fracture N.M.'s ribs; however, that does not completely rule out the possibility. Moreover, while the results of N.M.'s blood tests and lab work did not uncover any specific genetic disorders to explain the fractures, testing showed that N.M. has a genetic variant that, while unlikely to contribute to the her bone health, could not be definitively ruled out by Dr. Stavas[23] as contributing to her fractures, noting that the mutation is "not in the literature."[24] ***See*** N.T. Adjudicatory Hearing, 7/7/16, at 84. Parents' stories regarding the events leading up to discovering N.M.'s injuries were internally consistent; they have remained consistent to date. ***Cf. In the Interest of J.R.W.***, 631 A.2d 1019 (Pa. Super.

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[23] Andrew C. Edmondson, MD, PhD, a geneticist fellow at CHOP, issued a progress note on May 3, 2016, concluding that her genetic mutation (LEPRE1), ***see infra*** n.24, is inconsistent with the inheritance pattern of the recessive form of OI and that her fractures do not fit with the described phenotype of individuals with recessive OI due to that type of mutation. Thus, he opined, that "this change is most likely a neutral variant [and] does not explain her clinical presentation." Progress Notes of Andrew C. Edmondson, MD, PhD, 5/3/16, at 1.

[24] Genetic testing revealed that N.M. has a gene, LEPRE1, that affects collagen modification and produces prolyl 3-hydroxylase 1 (P3H1). P3H1 interacts with collagen and modifies amino acids in the collagen chains. *Recessive Forms of OI*, Osteogenesis Imperfecta Foundation (May 2007). Although Dr. Stavas testified that N.M. does not have OI, ***see*** N.T. Adjudicatory Hearing, 7/7/16, at 84, defects in P3H1 appear to account for most of the cases of severe/lethal OI which do have biochemically abnormal collagen, but do not have a collagen mutation. In fact, recessive OI has been discovered only in individuals with lethal, severe or moderate OI. *Recessive Forms of OI*, ***supra***. ***See supra*** n.7.

1993) (child abuse case where parents provided various, inconsistent reasons for child's life-threatening injuries). Thus, the court's strategy of denying kinship care and leaving N.M. in foster care to force Parents to explain the root cause of her injuries has not been a winning one. ***See In re: L.Z.***, 111 A.3d 1164, 1171 (Pa. 2015) (recognizing dissent in prior appeal that observed "child abuse cases often involve 'an apparent conspiracy of silence,' where all the parents and caregivers refuse to explain who was responsible for the child at the exact moment of injury.").

At the conclusion of the July 7, 2016 adjudicatory hearing, the trial court noted that parents were fully compliant with their objectives, however, it ordered N.M. remain in foster care "until the cause of N.M.'s injury was determined" and "until the Court [is] advised of an explanation of N.M.'s injuries while in the care of Mother and Father." Trial Court Opinion, 8/10/17, at 4.

While Parents did not challenge the court's July 2016 finding[25] of child abuse,[26] the court acknowledged that parents submitted to all requested evaluations, parenting classes, and therapy. DHS referred Mother to have a parenting capacity evaluation completed. On October 17, 2016, Doctors William Russell, Ph.D., and Sheetal A. Duggal, Psy.D., examined Mother to "assess [her] ability to provide safety and permanency to her daughter[, N.M.]." Report of Forensic Evaluation, 10/17/16, at 1. In that report, Doctors Russell and Duggal opined that if Parents followed their recommended course

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[25] Dependency proceedings are governed by the Juvenile Act, 42 Pa.C.S. §§ 6301-75. However, the Child Protective Services Law (CPSL) controls determinations regarding findings of child abuse, which the juvenile courts must find by clear and convincing evidence. ***See In the Interest of J.R.W.***, 631 A.2d 1019 (Pa. Super. 1993). The CPSL, defines, in part, a "founded report," where there has been a judicial adjudication that includes a "finding of dependency under 42 Pa.C.S. § 6341 (relating to adjudication) if the court has entered a finding that a child who is the subject of the report has been abused." 23 Pa.C.S. § 6303(a)(1)(iii). "Child abuse" is defined, in part, under the CPSL as "intentionally, knowingly or recklessly . . . [c]ausing bodily injury to a child through any recent act or failure to act." ***Id.*** § 6303(b.1)

[26] Under the Juvenile Act, courts employ a *prima facie* evidentiary standard in making a legal determination as to the identity of the abuser in child abuse cases. ***See*** 23 P.S. § 6381(d) ("Evidence that a child has suffered serious physical injury, sexual abuse or serious physical neglect of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or other person responsible for the welfare of the child shall be prima facie evidence of child abuse by the parent or other person responsible for the welfare of the child."). However, there must still be clear and convincing evidence to establish that the child was abused. Moreover, a finding of child abuse under the Juvenile Act is not the same as a finding of guilt in a criminal proceeding.

of treatment, joint couples' counseling individual therapy, and medication protocols, "[Parents] should be able to provide safety and permanency to [N.M.]" Parenting Capacity Evaluation Report, 10/17/16, at 14.

At the December 2016 permanency hearing, the court denied Parents' requests to be reunified with N.M. or to place her in kinship care. The court expressed "grave concerns" about the safety of N.M. if moved into kinship care. The court found Mother lacked credibility at the abuse hearing, and that it could not reunify N.M. with Parents while "the thing that brought this case into [court] still exist[s] with no explanation." N.T. Permanency Hearing, 12/8/16, at 16. Finally, the trial judge noted that if it left N.M. in foster care "maybe [she] would get closer to an answer as to what happened instead of moving [N.M.] with grandmom." ***Id.*** at 29.

While reunification with Parents may not have been appropriate following the December 2016 permanency review hearing, the court's reason for not at least placing N.M. in kinship care is unsupported by the evidence of record and, thus, was an abuse of discretion.[27] ***See In the Interest of M.T.,***

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[27] In ***In re R.R.***, 686 A.2d 1316 (Pa. Super. 1996), we noted:

> It is true that in furtherance of its goal of preserving family unity whenever possible, 42 Pa.C.S. § 6301(b) of the Juvenile Act requires clear and convincing evidence of dependency before the court can intervene in the relationship between a parent and child. ***In the Interest of R.T.***, [] 592 A.2d [55,] 58 [(Pa. Super.

supra (while parental progress toward completion of permanency plan is important factor, it is not to be elevated to determinative status, to exclusion of all other factors). Paternal grandmother was willing and able to provide kinship care for N.M. E.M. had thrived in paternal grandmother's care upon his initial placement. At the May 2017 permanency hearing, a DHS social worker testified that she would explore paternal grandmother as a willing, approved kinship provider. To deny kinship care based on the unsupported speculation that Parents would abuse visitation rights and visit paternal grandmother's home without agency supervision is overreaching. The Juvenile Act provides for the protection of children under these exact circumstances. ***See*** 42 Pa.C.S.A. 6351(a)(2)(iii) (disposition of dependent child allows court to "permit the child to remain with . . . guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.").

> 1991)]. However, the Juvenile Act does not require proof that a parent has committed or condoned abuse before a child can be found dependent. Rather, dependency as defined in the Act exists where a child is without proper parental care, defined as "care or control necessary for his physical, mental, or emotional health or morals." 42 Pa.C.S. § 6302. Thus the Juvenile Act permits a finding of dependency if clear and convincing evidence establishes that a child is lacking the particular type of care necessary to meet his or her individual special needs.

Id. at 1317-18.

In fact, it is exactly this unwarranted and continued assumption that has kept N.M. in protracted foster care, especially where the court found that Parents had fully complied with their service plan objectives, which included behavioral health evaluations, completion of parenting classes, attending individual therapy and parenting capacity evaluations. ***See*** N.T. Permanency Review Hearing, 12/8/16, at 16 ("I'll find that parents are fully compliant."). Tellingly, the court's refusal to provide kinship care or reunify N.M. with Parents has provided the evidentiary platform to support DHS' termination petition. In essence, this is an example of judicially-created parental alienation.

We remind the court that "the primary purpose of the Juvenile Act is 'to preserve the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this chapter.'" 42 Pa.C.S.A. § 6301(b)(1). Moreover, the foregoing goals are to be achieved "in a family environment whenever possible, separating the child from parents **only when necessary for his welfare or in the interests of public safety**." 42 Pa.C.S.A. § 6301(b)(3) (emphasis added). Any decision to remove the child from his home must be reconciled with the paramount purpose of preserving the unity of the family. ***In Re Angry***, 522 A.2d 73, 75 (Pa. Super. 1987) (citations omitted). Involuntary termination of parental rights presupposes a finding by the juvenile court that the child is dependent and that, in the best interest of the

child and by reasons of "clear necessity," removal from the parental home is required. ***Id.*** at 75.

Here, the trial court's repeated refusal to consider approved kinship care, in light of the fact that it also found Parents fully compliant with their treatment goals as of December 2017 and where DHS supported kinship placement with paternal grandmother, is an abuse of discretion and not supported by the record. The court's decision runs counter to the primary purpose of the Juvenile Act, to preserve the family unit. Even if the court specifically found that returning N.M. to her Parents was not best suited to her safety and protection, the court was obligated to explore the possibility of her placement with "a fit and willing relative." ***See id.*** 42 Pa.C.S. § 6351(f.1)(4). Accordingly, we are constrained to reverse the court's December 8, 2016 permanency orders, which are not supported by clear and convincing evidence.[28]

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[28] Moreover, the court's refusal to accept any medical testimony to explain N.M.'s injuries, despite asking for same at several hearings, created an insurmountable barrier to their reunification with N.M.

Having determined that the court's permanency order must be reversed, we must also vacate the trial court's decrees that prematurely changed the goal from reunification to adoption and terminated[29] Parents' rights to N.M.[30]

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[29] We note that even had we affirmed the permanency orders, we still would have vacated the trial court's termination orders. In her Rule 1925(a) termination opinion, Judge Younge noted that a social worker testified that "there is a deficiency in the protective capacities of Mother and Father because they perceive each other in the family unit as safe and not responsible for N.[]M[.]'s injuries [and that they] continue to reside with each other as indicated perpetrators." Trial Court Opinion, 2/9/18, at 7. Moreover, the court relied upon testimony that the safety threat to N.M. continued to exist at the time of the termination hearing, based upon the fact that the injuries to N.M. were still unexplained. Finally, the court based its termination decision in large part on the fact that Parents were not fully compliant with their objectives "due to failure to address the mental health therapy order by the Court from the inception of the case." ***Id.*** at 8, *citing* N.T. Termination Hearing, 10/26/17, at 276. To support the goal change to adoption, the trial judge "reasoned . . . Mother and Father failed to present any solid evidence as to progress made in their therapy[,] did not offer treatment plans, nor progress reports or therapist testimony at the [termination] hearing[,] and failed to provide assurances of a level of safety or permanency plan for N.[]M. in fifteen (15) months." Trial Court Opinion, 2/9/18, at 9. We are not convinced that the record clearly and convincingly supports these findings. ***See In re Matsock***, 611 A.2d 737 (Pa. Super. 1992) (where no sexual abuse charges had been filed against father nor had he been prosecuted for alleged offense, our Court reversed termination decree where evidence showed father fulfilled affirmative duty to work toward children returning home, even where father "refused to admit his predetermined guilt [which the trial court found] negated his ability to be 'cured'.").

In reviewing the evidence in support of termination under section 2511(b), our Supreme Court stated as follows:

> [I]f the grounds for termination under subsection (a) are met, a court "shall give primary consideration to the developmental,

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

In re: T.S.M., 71 A.3d 251, 267 (Pa. 2013). With regard to termination under section 2511(b), the court found:

> Testimony of [a] social worker was that N.[]M. has a parent-child bond with her pre-adoptive foster parent. [A s]ocial worker testified N.[]M. has [a] good relationship with her foster mother [and] looks to her to meet her day[-]to[-]day[-]needs. N.[]M. has developed a bond with her foster mother in the twenty (20) months she has resided in the home. Furthermore, [a] social worker stated if N.[]M. w[ere] removed from her current foster home there would be a harmful emotional impact on N.[]M. The social worker testified N.[]M. could not be safely reunified with parents because a safety threat of the unexplained injury still exists. The social worker testified there were no safety concerns for N.[]M. in the foster home. Furthermore, the social worker testified N.[]M. had not experienced any significant injuries since entering foster care.

Trial Court Opinion, 2/9/18, at 9 (citations to record omitted).

While courts shall also consider whether children are in a pre-adoptive home and are bonded with their foster parents, ***In re: T.S.M.*** at 269, here, the court made absolutely no mention of the parent-child bond – the foundation of a needs and welfare analysis under section 2511(b).

At the termination hearing, an agency worker testified that N.M. would "light up" when she visited with Parents. N.T. Termination/Goal Change Hearing, 10/26/17, at 1-3 (237). Father testified that he and Mother have positive

parental bonds with N.M., that N.M. gets very excited and "bangs on the glass" when she comes to the agency for visits, that she calls them "mommy and daddy," and that she runs to them when she sees them at visits. Finally, Father testified that a strong sibling bond exists between N.M. and E.M. Accepting this uncontroverted testimony, we would find that the trial court abused its discretion in terminating Parents' parental rights under section 2511(b), where the evidence does not clearly and convincingly discern the effect on the child of permanently severing the parental bond. ***In re: T.S.M.***, ***supra***.

[30] We find ourselves constrained to comment as follows: despite record evidence that the trial court allegedly relied upon, the one factor, the elephant in the room, is that the trial judge was and remains the cause of the deteriorated bond between Parents and N.M. in this matter.

The record is replete with attempts by Parents to meet the goals set by the trial judge, however she continued to put up barriers to reunification. As an example, the trial judge stated at the December 8, 2016 hearing that she wanted some testimony as to how the injuries happened. However, at every hearing from March 2017 onward, she refused to allow such testimony, stating that the failure of Parents to appeal her earlier decision with regard to the etiology of N.M.'s injuries was final and could no longer be addressed. When the agency stated that Parents had complied with their goals, the court said, "I'll find that [P]arents are compliant. It doesn't move the needle for me." She further stated that "I guess the other side of the conversation is if I leave her [in foster care] maybe I get closer to an answer as to what happened instead of moving her to grandmom. . . . So, I'm not going to consider kinship care." When the agency determined that kinship placement was available and appropriate, the trial court ruled in May of 2017 that grandparent visitation with N.M. is immediately suspended; it is not in N.M's continued best interests to explore placement in kinship care. In short, despite the goals of the Child Protective Services Law, the trial judge seems to have done everything in her power to alienate these parents from their child, appears to have a fixed idea about this matter and, further, she prohibited evidence to be introduced that might have forced her to change her opinion.

While this court must take and does take the issue of abuse of a child very seriously, the fact that a trial judge tells parents that unless one of them "cops

Permanency orders reversed. Goal change/Termination decrees vacated. Jurisdiction relinquished.[31]

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/4/18

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to an admission of what happened to the child" they are going to lose their child, flies in the face of not only the CPSL, but of the entire body of case law with regard to best interests of the child and family reunification. We find that the record herein provides example after example of overreaching, failing to be fair and impartial, evidence of a fixed presumptive idea of what took place, and a failure to provide due process to the two parents involved. Finally, the most egregious failure in this matter is the refusal to allow kinship care, despite the paternal grandmother being an available and approved source for same. The punishment effectuated by the trial judge was, at best, neglectful and, at worst, designed to affect the bond between Parents and N.M. so that termination would be the natural outcome of the proceedings. This is an extremely harsh penalty for parents who have complied in every way with the requirements of the CPSL.

[31] We recognize that the Supreme Court has admonished our Court when we have *sua sponte* directed that a different trial judge take over a case on remand. ***See Reilly by Reilly v. SEPTA***, 489 A.2d 1291 (Pa. 1985). However, in light of the strong case Parents have made for recusal, the sensitive nature of this case and the seeming confusion that the court has with regard to certain issues (aggravated circumstances finding), we strongly suggest if another petition for recusal is filed below, that the trial judge give serious consideration as to whether her apparent bias warrants that she recuse herself.