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NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

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

APPEAL OF: C.D., MOTHER : No. 2026 MDA 2013

Appeal from the Order Entered October 21, 2013
In the Court of Common Pleas of Lebanon County
Criminal Division at No. CP-38-DP-0000033-2009

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

APPEAL OF: C.D., MOTHER : No. 2027 MDA 2013

Appeal from the Order Entered October 21, 2013
In the Court of Common Pleas of Lebanon County
Criminal Division at No. CP-38-DP-0000034-2009

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

APPEAL OF: C.D., MOTHER : No. 2028 MDA 2013

Appeal from the Order Entered October 21, 2013
In the Court of Common Pleas of Lebanon County
Criminal Division at No. CP-38-DP-0000013-2013

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

APPEAL OF: W.D., JR., FATHER : No. 2064 MDA 2013

Appeal from the Order Entered October 21, 2013
In the Court of Common Pleas of Lebanon County
Criminal Division at No. CP-38-DP-0000013-2013

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

APPEAL OF: W.D., JR., FATHER : No. 2065 MDA 2013

Appeal from the Order Entered October 21, 2013
In the Court of Common Pleas of Lebanon County
Criminal Division at No. CP-38-DP-0000034-2009

IN THE INTEREST OF: W.D., III, : IN THE SUPERIOR COURT OF
A MINOR : PENNSYLVANIA
: :
: :
APPEAL OF: W.D., JR., FATHER : No. 2066 MDA 2013

Appeal from the Order Entered October 21, 2013
In the Court of Common Pleas of Lebanon County
Criminal Division at No. CP-38-DP-0000033-2009

BEFORE: BENDER, P.J.E., DONOHUE, J. AND STRASSBURGER, J.*

MEMORANDUM BY BENDER, P.J.E. **FILED APRIL 21, 2014**

C.D. ("Mother") and W.D., Jr., ("Father") appeal from the orders dated October 21, 2013, that changed the placement goal for the couple's children, W.D., III, born in September of 2006, A.D., born in December of 2008, and B.D., born in March of 2010, (collectively "the Children") from reunification with parents to adoption.¹ After review, we affirm.

The trial court summarized the factual and procedural history of this case in its Pa.R.A.P. 1925(a) opinion as follows:

Lebanon County Children and Youth Services [(LCCYS)] became involved with the [D.] family on September 10, 2009, when the agency received a report that the parents were accused of child endangerment for allowing one child to run out into a busy street into on-coming traffic and leaving another child unattended while in a stroller. On September 14, 2009, the Lebanon City Police

¹ We now consolidate *sua sponte* Mother's appeals and Father's appeals for ease of disposition.

*Retired Senior Justice assigned to the Superior Court.

responded to the house at 353 N. 8th Street, Lebanon, Pennsylvania and found a child hanging out of a second story bedroom window while Mother was sleeping. Upon entering the home, police found deplorable, unsafe home conditions and Mother was given 48 hours to clean the home or it would be condemned. Mother signed a Voluntary Placement Agreement with [LCCYS]. On September 22, 2009, LCCYS indicated Mother as a perpetrator of Imminent Risk resulting in a physical injury for the window incident and took Emergency Custody of the children.

. . .

On October 12, 2009, a dependency hearing was held and the children were adjudicated dependent. A placement review hearing was held on March 17, 2010[,] where it was determined to keep the children in placement as the parents had only made moderate progress in their parenting skills and child safety issues; [the court] found that placement continued to be necessary, and that [LCCYS] had expended all reasonable efforts to complete the Permanency Plan in effect at that time. However, a permanent placement goal of being returned to the parent's home was set. Another review hearing was held on September 21, 2010, where it was reported that both parents showed substantial improvements in their parenting and child safety skills.

However, at the following review hearing held on January 10, 2011, both Mother and Father had only made minimal progress. The [c]ourt found that both parents lacked the ability to consistently apply what they have learned from their various treatment providers over the prior sixteen (16) months. The [c]ourt then changed the placement goal from return to parents to adoption. At the April 18, 2011 review hearing, testimony was provided that the parents had show[n] full compliance with the permanency plan. Due to the parents['] remarkable turn-around, the placement goal was changed back to a return to the parents and then children were returned home. On October 11, 2011, a review hearing was held where testimony revealed that the parents only had moderate compliance with the plan and the [c]ourt directed LCCYS to conduct unannounced visits on the home. On March 15, 2012, the children were discharged from the custody and control of LCCYS.

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On April 9, 2013, LCCYS filed a Dependency Petition alleging that despite the services the parents were receiving, the conditions of the home were deteriorating. ... On May 6, 2013 a hearing was held and [the Children] were adjudicated dependent and were returned to their parents' house. The [c]ourt then granted LCCYS the power to place the children if the home conditions continued to deteriorate. On October 2, 2013, LCCYS filed a Motion for Placement and the [c]ourt removed the children from the home. ... A hearing was held on October 21, 2013. Counsel for Mother, Father, the Children, and [LCCYS] appeared at the hearing as did Mother and Father. The Court heard testimony from [LCCYS] protective care Caseworker Sarina Ushkowitz[, and Mother and Father[.]

Trial Court Opinion (T.C.O.), 12/13/13, 3-4.

Based on the testimony provided at the October 21, 2013 hearing, the trial court "determined that it was in the best interest of the child[ren] that the goal of placement should be changed to adoption." *Id.* at 5. Each parent filed appeals from the orders entered by the court relating to each child. Both parents also filed concise statements of errors complained of on appeal. Mother raises the following issue in her brief to this Court:

Was sufficient evidence produced at [the] hearing to support a finding that the goal should be changed to adoption?

Mother's brief at 1. In his brief, Father raises two issues for our review:

Whether sufficient evidence was presented to support the Trial Court's decision to change the placement goal of the dependent children from reunification with the parents to adoption?

Whether the trial court abused its discretion in changing the placement goal of the dependent children from reunification with the parents to adoption?

Father's brief at 4.

In addressing the issues raised in this matter, which are essentially sufficiency of the evidence claims, we are guided by the following:

In cases involving a court's order changing the placement goal ... to adoption, our standard of review is abuse of discretion. ***In re N.C.***, 909 A.2d 818, 822 (Pa. Super. 2006). To hold that the trial court abused its discretion, we must determine its judgment was "manifestly unreasonable," that the court disregarded the law, or that its action was "a result of partiality, prejudice, bias or ill will." ***Id.*** (quoting ***In re G.P.-R.***, 851 A.2d 967, 973 (Pa. Super. 2004)). While this Court is bound by the facts determined in the trial court, we are not tied to the court's inferences, deductions and conclusions; we have a "responsibility to ensure that the record represents a comprehensive inquiry and that the hearing judge has applied the appropriate legal principles to that record." ***In re A.K.***, 906 A.2d 596, 599 (Pa. Super. 2006). Therefore, our scope of review is broad. ***Id.***

In re S.B., 943 A.2d 973, 977 (Pa. Super. 2008).

Furthermore, this Court has stated:

Placement of and custody issues pertaining to dependent children are controlled by the Juvenile Act [42 Pa.C.S. §§ 6301-65], which was amended in 1998 to conform to the federal Adoption and Safe Families Act ("ASFA"). The policy underlying these statutes is to prevent children from languishing indefinitely in foster care, with its inherent lack of permanency, normalcy, and long-term parental commitment. Consistent with this underlying policy, the 1998 amendments to the Juvenile Act, as required by the ASFA, place the focus of dependency proceedings, including change of goal proceedings, on the child. Safety, permanency, and well-being of the child must take precedence over *all* other considerations, including the rights of the parents.

In re N.C., 909 A.2d 818, 823 (Pa. Super. 2006) (citations omitted) (footnotes omitted). Additionally, we recognize that "the agency has the burden to show a goal change would serve the child's best interests...." ***In re R.M.G.***, 997 A.2d 339, 347 (Pa. Super. 2010).

Specifically, section 6351 of the Juvenile Act provides direction to the trial court for the disposition of dependent children, stating in pertinent part:

§ 6351. Disposition of dependent child

* * *

(f) Matters to be determined at permanency hearing.—At each permanency hearing, a court shall determine all of the following:

- (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:

- (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.

* * *

(f.1) Additional determination.—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.

(5) If and when the child will be placed in another living arrangement intended to be permanent in nature which is approved by the court in cases where the county agency has documented a compelling reason that it would not be best suited to the safety, protection and physical, mental and moral welfare of the child to be returned to the child's parent, guardian or custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit and willing relative.

(f.2) Evidence.—Evidence of conduct by the parent that places the health, safety or welfare of the child at risk, including

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evidence of the use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk, shall be presented to the court by the county agency or any other party at any disposition or permanency hearing whether or not the conduct was the basis for the determination of dependency.

(g) Court order.—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.

42 Pa.C.S. § 6351(f), (f.1), (f.2), (g).

Additionally, this Court has provided further considerations that apply in goal change situations, stating:

Because the focus is on the child's best interests, a goal change to adoption might be appropriate, even when a parent substantially complies with a reunification plan. ***In re N.C., supra*** 826-27 [(Pa. Super. 2006)]. Where a parent's "skills, including [his or] her judgment with regard to the emotional well-being of her children, remain problematic[,]" a goal change to adoption might be appropriate, regardless of the parent's compliance with a permanency plan. ***Id.*** at 825. The agency is not required to offer services indefinitely, where a parent is unable to properly apply the instruction provided. ***In re A.L.D.,*** 797 A.2d 326, 340 (Pa. Super. 2002). ***See also In re S.B., supra*** at 981 (giving priority to child's safety and stability, despite parent's substantial compliance with permanency plan); ***In re A.P.,*** 728 A.2d 375, 379 (Pa. Super. 1999), *appeal denied*, 560 Pa. 693, 743 A.2d 912 (1999) (holding where, despite willingness, parent cannot meet "irreducible minimum parental responsibilities, the needs of the child must prevail over the rights of the parent"). Thus, even where the parent makes earnest efforts, the "court cannot and will not subordinate indefinitely a child's need for permanence and stability to a parent's claims of progress and hope for the future." ***In re Adoption of R.J.S.,*** 901 A.2d 502, 513 (Pa. Super. 2006).

In re R.M.G., 997 A.2d at 347.

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In Mother's brief, she argues that the court did not address all of the factors listed in section 6351(f) of the Juvenile Act. Namely, she contends that the court did not consider the mandates of the statute with regard to: "(1) [t]he continuing necessity for and appropriateness of the placement[,]" "(3) [t]he extent of progress made toward alleviating the circumstances which necessitated the original placement[,]" and "(5.1) [w]hether reasonable efforts were made to finalize the permanency plan in effect." 42 Pa.C.S. § 6351(f)(1), (3), (5.1).

With regard to subsection (1), Mother contends that the Children had only been in foster care for 21 days prior to the hearing and that no evidence was presented about the "circumstances then present" that necessitated placement. Mother's brief at 7. Mother also asserts that the court was not apprised of alternative placement arrangements for the Children. As to subsection (3) Mother avers that she took "substantial steps toward alleviating the circumstances which necessitated the original placement[,]" *id.*, by separating from Father and moving into separate housing with the Children. However, Mother contends that the court did not consider her actions and only relied on LCCYS's statements that she would "probably ... cause her new home ... to become like the home inhabited by [F]ather alone." *Id.* at 8. Lastly, referencing subsection (5.1), Mother contends that because both she and Father have mental health issues, LCCYS does not wish to continue to expend resources to keep this family

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together. In particular, Mother relies on the fact that she and Father have shown that with the extensive services provided in the past they can maintain satisfactory living conditions for the family.

Father's position is similar to Mother's in that he recognizes that with a goal change, services would no longer be available to aid the parents in meeting the goals necessary to have the Children returned to them. He does not contest the determination that the Children are dependent and have been placed in foster care. Rather, he centers his argument on a lack of consideration about his ability to comply with LCCYS's requirements in light of his mental health history and his need for additional services. Father essentially complains that LCCYS did not present evidence about his ability to comply with the goals set for him when services were being provided. He further contends that the one-month placement did not provide sufficient time to meet his goals. Mother and Father also assert that the court should have considered "concurrent planning," noting that the Supreme Court "encourage[s] [c]ourts to use concurrent planning because it keeps alive reunification." Father's brief at 18 (citing *In re R.J.T.*, 9 A.3d 1179, 1191 (Pa. 2010)). Mother simply states that the court was not told about other placement arrangements. Finally, Father contends that the court has sent a message to the Children "that mental illness is so unacceptable that it requires that a child have no contact with a parent who is mentally ill." ***Id.***

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The trial court's opinion reiterates the history of this case back to 2009, when LCCYS first became involved with this family. The prior overview, quoted *supra*, provides highlights of the facts as found by the court during the period of time from 2009 until March 15, 2012, when the Children were discharged from oversight by LCCYS. However, after the discharge, LCCYS continued to make unannounced biweekly visits and to provide services. The court also set forth the actions taken by LCCYS beginning in April of 2013 that led up to the order now on appeal.

Regarding this most recent period, the court stated:

On April 9, 2013, a Dependency Petition was filed for [all three Children]. I[n] the petition it was alleged that the conditions of the home continued to deteriorate despite the services in place for the family. At the time of the petition, the following services were involved with the family: MH/MR services, IU13 early intervention in-home program, Therapeutic Staff Support, Mobile Therapist, Speech Therapist, Medication management, individualized outpatient therapy, case management services and Family Based Services. LCCYS had also given the family multiple opportunities to clean the home. Service providers had also spoken with the family about cleaning the home.

In May, 2013, LCCYS found that the home conditions had deteriorated again. Mouse feces and roaches were found in the house. There was clutter everywhere, including many choking hazards left on the floor within [B.D.'s] reach. A service plan was created because the children were determined to be at a moderate risk in the parents' house. The parents were aware the lack of a clean house was the biggest reason the Children were removed from the home and that was the most important goal LCCYS needed them to complete. On May 6, 2013, following a hearing, the [C]hildren were adjudicated dependent and this Court gave LCCYS the power to place the [C]hildren if the home conditions continued to deteriorate.

[On] October 2, 2013, the [C]hildren were removed from the home due to the deplorable conditions. Following a hearing on October 21, 2013, this Court found it in the Children's best interest that the permanency plan goal be changed to adoption. The Court heard testimony from Caseworker Ushkowitz, Mother, and Father. Testimony at the hearing revealed that LCCYS determined that the family had minimal support in place. The parents were unable to maintain safe and sanitary housing and it was suspected that Mother was using synthetic drugs as well as marijuana. Following a review, LCCYS learned that the parents had separated and were living in separate homes. At one point during the separation, Mother had assaulted Father, allegedly while she was under the influence of synthetic marijuana. Because of the assault, Mother was not allowed to return to the home. However, Mother and Father both told LCCYS that she did return to the house when Father was not there.

Shortly after the assault, Mother came to LCCYS and reported that the house was very messy and essentially blamed Father for the conditions. When LCCYS arrived at the house they found clothing everywhere, including on the steps, which is a tripping hazard for anyone in the house. There was also cereal all over the floor, everywhere in the house. There was mold on some of the food and things piled in the sink. At the time, Father was in the kitchen doing dishes. Caseworker Ushkowitz testified that many of the times [LCCYS workers] would stop by Father would be cleaning and would tell her she couldn't go upstairs because it was a mess. Medications that were previously out of the [C]hildren's reach were found on the TV stand in easy reach of the [C]hildren. Little bugs were found in the kitchen and it was impossible to open the refrigerator because of all of the clutter. Upstairs, in the room Father shared with [B.D.], there was an old hot dog on the floor next to [B.D.'s] bed. There were other food and Tupperware containers, garbage and wrappers next to the bed as well. There were medicine bottles lying around in different rooms, and [Father] was unsure if they were his or not. The bathtub was full of water where it had not been drained from the [C]hildren's baths the night before. These conditions were similar to the conditions in 2009 when the [C]hildren were removed from the house the first time.

LCCYS was also concerned that both Mother and Father were not utilizing their own mental health treatment

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consistently. Father is diagnosed schizophrenic and Mother[’s] diagnoses are AD/HD, ADD, bipolar, psychotic features, homicidal, suicidal. Mother told the Caseworker that Father did not take his medication for over two weeks. Father testified that he was unsure how long he had been seeing a therapist and was also unsure how long he had been on prescription medicine. He admitted that he only “sometimes” took his medication as prescribed and that “a lot of times” he forgets. Caseworker Ushkowitz stated that Mother would often come to appointments and sleep the entire time. She also would occasionally state that she did not have a current therapist, or was between therapists. Dad told Caseworker Ushkowitz that Mother was using synthetic marijuana. During the visit to the house following Mother’s assault on Father, Caseworker Ushkowitz found wrappers for synthetic marijuana in Mother’s room that she shared with her boyfriend. The wrapper and remnants of a smoked joint were on the floor in Mother’s room, in easy reach of any of the [C]hildren.

Currently, the parents are separated and both have moved out of the house on 8th Street and found separate housing. However, at the time of the hearing on October 21, 2013, Caseworker Ushkowitz had not been to see the residences. Mother testified she has a two bedroom apartment that she shares with her boyfriend. The rent for the apartment is \$700 a month plus electric heat. Mother stated that she makes \$723 a month from disability and “scraps” (she sells scrap metal) for additional money. Mother’s boyfriend is currently waiting to receive disability for his bipolar diagnosis. Father has also moved into a two bedroom apartment as well. The Court notes that there continues to be problems with parents’ living conditions. There are genuine concerns that the condition of any future residence would quickly deteriorate, especially if the parents are separated. Father has admitted that he has difficulty keeping the house clean without Mother’s help.

While Mother and Father have followed through on some recommendations since LCCYS became involved; they continue to be unable to maintain a safe home for their [C]hildren, despite years of assistance. We find that neither parent is able to effectively put into action the parenting skills they have been provided over with [*sic*] the years. The Court took into consideration the parents’ on-going mental health issues. The Court also took into consideration Mother’s statement that she

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wants the children to be placed with the [B. family], adoption or not.

The parents are well aware of what is necessary to have the [C]hildren return to their home; they have been successful in the past. However, they have proven they cannot maintain a safe and sanitary home. We find that it is in the best interest of the [C]hildren to have some permanency in their lives and we believe this is best achieved by changing the permanency goal to adoption. The Court is cognizant of the fact that the [C]hildren have already spent 18 months in placement, from September 2009 through April 2011. The oldest child is seven and he has spent half his life in this unsettled condition of placement or an unsafe home. It is not in the [C]hildren's best interest to languish in foster care. Therefore, in consideration of all the testimony presented at the October 21, 2013 hearing and in consideration of the history of this case, this [c]ourt committed no error in changing the Children's permanency plan to adoption.

T.C.O. at 11-15 (citations to the record omitted).

We agree. Our review of the extensive record and the trial court's opinion reveals that the court did address all necessary factors listed in sections 6351(f) of the Juvenile Act. Specific identification of the factors by the court in relation to the evidence presented is not necessary. **See R.J.T.,** 9 A.3d at 1190 (recognizing that court considered the various factors of section 6351(f), "even if it failed to itemize its findings"). Additionally, in response to Mother's and Father's allegations concerning the short period of time the Children were in foster care during this latest episode is not what the court identified as the sole reason for changing the goal. Rather, the court took into account the entire history of this case and noted the considerable period of time that the Children have been in placement. The court also recognized the parents' mental health issues and determined that

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despite the services provided throughout the history of this matter, the parents have been unable to maintain a safe environment for the Children. We further note the contention that the court should have considered “concurrent planning.” However, neither parent identifies any information contained in the record that could have been the basis for the court to implement such a plan for the Children.

Our Supreme Court in ***R.J.T.*** discusses why this Court “must employ an abuse of discretion standard of review” when these types of cases are before us. ***Id.*** Noting that appellate courts are not in a position to make fact-specific determinations, the Supreme Court stated:

Not only are our trial judges observing the parties during the hearing, but usually, ... they have presided over several other hearings with the same parties and have a longitudinal understanding of the case and the best interests of the individual child involved. Thus, we must defer to the trial judges who see and hear the parties and can determine the credibility to be placed on each witness and, premised thereon, gauge the likelihood of the success of the current permanency plan. Even if an appellate court would have made a different conclusion based on the cold record, we are not in a position to reweigh the evidence and the credibility determinations of the trial court.

Id. at 1190.

The trial court here gave reasons for its determination that adoption was the appropriate goal for these Children. The reasons are based upon the evidence of record. Finally, we are aware that the “[s]afety, permanency, and well-being of the child[ren] must take precedence over *all* other considerations, including the rights of the parents.” ***In re N.C.***, 909

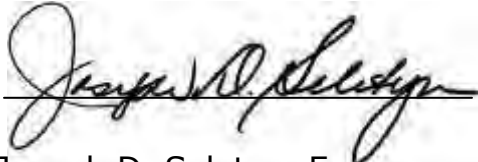
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A.2d at 823. The goal of adoption will end Children's languishing in limbo as they have for much of the past five years. Accordingly, we affirm the court's orders changing the goal from reunification to adoption.

Orders affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/21/2014