NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

IN RE: TERMINATION OF PARENTAL RIGHTS TO M.J.P., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: W.J.P. , FATHER	:	No. 1199 EDA 2026

Appeal from the Decree Entered April 13, 2026
In the Court of Common Pleas of Lehigh County Orphans' Court at No(s): A2024-0048

BEFORE: LAZARUS, P.J., MURRAY, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY LAZARUS, P.J.: **FILED NOVEMBER 4, 2026**

W.J.P. (Father) appeals from the decree, entered in the Court of Common Pleas of Lehigh County, Orphans' Court Division, involuntarily terminating his parental rights to his minor child, M.J.P. (Child). Upon review, we affirm.

The trial court summarized the relevant facts as follows:

> [The Lehigh County Office of Children and Youth Services ("LCOCYS" or "the Agency")] first became involved with this family on or about February 25, 2023, the day after Child was born, [after] it received a referral that alleged [A.K.R. ("Mother")] and Child both tested positive for amphetamine.[4] Child had to be monitored for withdrawal in the Neonatal Intensive Care Unit. Further testing of the umbilical cord showed the presence of methamphetamines, which was consistent with a March 2, 2023 referral to LCOCYS that [alleged that] Mother used methamphetamines during her pregnancy. This March 2, 2023 referral was anonymous and alleged that Mother used illicit drugs throughout the pregnancy and, further, that she had been using

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* Retired Senior Judge assigned to the Superior Court.

water to dilute Child's diapers in the hospital with the intent to obscure drug testing procedures conducted on Child.[5] Father testified he was not aware of Mother's actions, but we note that during Mother's pregnancy with Child and for at least the first several months after Child's birth, Mother and Father lived together in Father's parents' home, which was not set up to receive a newborn when Child was born.

[4] After engaging in a General Protective Services ("GPS") investigation, the Agency concluded the allegations were valid.

[5] This second referral was also investigated and determined to be valid.

On March 2, 2023, both parents submitted to urinalysis, and both tested positive for substances. Father tested positive for amphetamine[,] but initially claimed the positive test result was due to his consumption of energy drinks. He admitted to the LCOCYS caseworker assigned at that time that he had a past substance abuse history, but he claimed he had no current drug use issues.

As a result of the positive urine screens of both parents, the Agency sought and obtained emergency custody of Child and placed him in a foster home on March 7, 2023. At a shelter care hearing on March 9, 2023, legal and physical custody of Child were transferred to LCOCYS. After [a] hearing held [on] March 14, 2023, Child was adjudicated dependent but was returned to the care of Mother and Father on that date, under the protective supervision of LCOCYS, conditioned upon the parents' strict compliance with the court-ordered recommendations.[8] Father stipulated that he had substance abuse issues that required treatment before he could safely care for the newborn infant without court oversight and services recommended by LCOCYS. His court-ordered recommendations were to:

1. Follow any recommendations from the drug and alcohol evaluation he had already completed;

2. submit urinalysis randomly as recommended by the Agency in order to demonstrate sobriety;

3. obtain and maintain legal income and stable housing;

4. cooperate with in-home services; and

> 5. notify the Agency of any changes of address or phone number.

These court-ordered services were specifically designed to effectuate reunification between Father and the infant Child.

> [8] By the time the [adjudicatory] hearing was held, the parents had already made efforts to address their substance abuse issues by undergoing substance abuse evaluations at Pyramid Healthcare ("Pyramid"), and their urine screens were negative for illicit substances at that time.

On April 21, 2023, the family's current LCOCYS caseworker received a text message from Mother indicating both she and Father had relapsed. On April 20, 2023, and April 21, 2023, both parents tested positive for methamphetamine. The caseworker visited them on April 24, 2023, and confronted them with the drug test results. Both parents agreed to obtain an additional drug and alcohol evaluation from Pyramid and follow any recommendations ensuing from that evaluation. However, when the caseworker tried to reach them on April 25, 2023, to confirm that they went to Pyramid, she did not receive any response from them; therefore, the Agency initiated proceedings to have Child emergently removed from the parents' care that day, and Child was placed again in foster care with the same family with which he had originally been placed. Child has remained with this foster family since April 25, 2023.

Permanency review hearings were held in the Juvenile Division on November 7, 2023[,] April 30, 2024[,] July 9, 2024[,] September 17, 2024[,] and [January] 21, 2025. The court-ordered recommendations for Father remained the same except that beginning on November 7, 2023, Father was also ordered to attend supervised visitation with Child. After Child was removed from his parents, Father attended the first permanency review hearing[,] but did not attend the remainder of the permanency review hearings. Consistently, the [] findings of the Juvenile Division in these review hearings were that Father complied only minimally with the permanency plan and made minimal or no progress toward alleviating the circumstances that necessitated Child's original placement. Credible testimony adduced at the termination hearing demonstrated that Father was consistent in certain court-ordered services, but he was inconsistent—or consistently noncompliant with—the court-ordered services that matter the most in a case of this nature, namely, complying with

substance abuse treatment and demonstrating his sobriety by submitting to random urinalysis as ordered.

The areas where Father showed consistency [were] that[:] he regularly visited Child;[13] he maintained stable housing in that he continued to live with his mother in her trailer/mobile home, even after his father passed away; and he[,] therefore[,] did not need to inform the Agency of any changes to address or phone number because the information did not change.

[13] Father's visits with Child [went] well. His visits increased from one hour supervised visitation at the Comfort Cottage to two hours supervised, then they decreased to one hour supervised; he has also had some supervised visits at the home.

Regarding the requirement to maintain legal income, Father maintained employment in the same seasonal landscaping and snow removal job [he had] held when LCOCYS originally became involved. He was still working in the same seasonal job at the close of the termination hearing. The Agency took issue with Father's employment in that it was not full-time, year-round work, and he has to rely on his mother and her S[ocial] S[ecurity] D[isability] income to help pay the bills associated with their household, including the mortgage and utilities. In [the] winter, he works plowing snow in private parking lots when there is a plowable snowfall, but otherwise he is laid off. His winter income is bolstered by unemployment compensation during the periods without snow and is approximately half of the salary he commands when he is able to work full[-]time. In spite of the Agency's attempts to convince Father to obtain other work with stable, consistent income throughout the year, Father maintained the employment he already had.

Father did not comply with the Juvenile Division[']s orders that he cooperate with in-home services, that he follow the recommendations from the drug and alcohol evaluation he had already completed, and that he submit urinalysis randomly as recommended by the Agency in order to demonstrate sobriety. Other than attending visits with Child, Father did not work on any goals with the in-home reunification service, JusticeWorks. The goals included reunification with Child and addressing substance abuse concerns and issues, to include connecting Father to community resources, assisting Father to develop coping skills regarding substance abuse, attending Averhealth screens, and

attending drug and alcohol treatment. [JusticeWorks] advised Father they would provide free transportation services to Averhealth if he contacted them and asked, but he never asked. They also set him up with a transportation service called Danny's Ride that provides free transportation to drug[-] and alcohol-related services, but Father did not utilize the services. Father did, however, utilize JusticeWorks for transportation to and from his visits with Child at the Comfort Cottage after transportation became an issue for Father; [JusticeWorks] also supervised Father's visits with Child. He was discharged from JusticeWorks on July 18, 2024, in part because he was incarcerated at that time and in part because he had not been making any progress with any of the reunification goals other than visitation with Child. The Agency did not refer Father to new in-home services because he failed to demonstrate interest in doing anything but visit[ing] with Child.

With respect to substance abuse treatment, Father attended another drug and alcohol evaluation through Pyramid on October 30, 2023, resulting in a recommendation that he attend outpatient therapy once every week; his request to receive treatment through telehealth was granted. The Agency made a referral for treatment at MARS, which participates in telehealth treatment, but Father did not participate in substance abuse treatment in person or through telehealth, with Pyramid or with MARS; as of the close of the termination hearing, he had not complied with the recommendation to attend outpatient substance abuse therapy.

With respect to submitting to urinalysis to demonstrate his sobriety, Father was scheduled to attend eight to nine random urine screens every month. He failed to attend 39 times during the first permanency review period and 45 times during the second permanency review period, during which period he attended a total of five scheduled urine screens[.] [F]our were negative and one, described below, he did attend but refused to produce a sample. After the Agency received information alleging that Father was tampering with his urine screens, Father's production of urine samples was required to be observed beginning on December 28, 2023. On that date, he refused to produce a urine sample; after that date, Father did not participate in any urine screens, although at one point, he did try to insist that someone from LCOCYS come to his home to pick up a urine sample from him.

> Father visited with Child regularly when he was not incarcerated. Father was incarcerated in Berks County from July of 2024 until September 14, 2024. His last visit with Child prior to his incarceration occurred at the end of June of 2024. After his release, his cousin helped him with rides to visits with Child, but Father told his LCOCYS caseworker that [his cousin] could not help him with rides to Averhealth or to new employment; however, he indicated she was helping him obtain a vehicle. Around February of 2025, Father obtained a vehicle and thereafter chose to drive himself every Monday to visit Child—apparently illegally while his driver's license was suspended—but he did not drive himself to Averhealth or substance abuse treatment.

Trial Court Opinion, 4/13/26, at 2–9 (citations, internal quotation marks, alterations, and some footnotes omitted).[1]

The Agency filed a petition to involuntarily terminate Father's parental rights on October 16, 2024. The trial court held a bifurcated hearing on the petition on April 23, 2025, and July 23, 2025. At the close of the July 2025 hearing, the court took the matter under advisement and ordered the Agency to file proposed findings of fact and conclusions of law, and Father and legal counsel/GAL for Child to file responsive findings of fact and conclusions of law, with which the parties complied. On April 13, 2026, the trial court issued a final decree terminating Father's parental rights under 23 Pa.C.S.A. §§ 2511(a)(1), (2), (5), and (8) and 2511(b). Father filed a timely notice of appeal and contemporaneous concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i).

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[1] The trial court made a finding that there was no conflict between Child's legal and best interests; accordingly, Brian C. Eves, Esquire, represented Child as both legal counsel and guardian *ad litem* (GAL) at the termination proceedings. ***See*** Trial Court Opinion, 4/13/26, at 2 n.2.

Father raises the following issues on appeal:

> 1. Did the trial court commit legal error and an abuse of discretion by impermissibly shifting the burden of proof to [F]ather to establish that he was not addic[]ted to controlled substances during the six (6) month period preceding the filing of the involuntary termination petiti[o]n here and then using such failure of proof on the part of [F]ather as a basis to terminate his parental rights?
>
> 2. Did the trial court commit legal error and an abuse of discretion by concluding that the needs and welfare of [C]hild will be served by terminating the parental rights of [F]ather when the evidence at bar unequivocally established that [F]ather was drug free, stable[,] and ready to legally and physically reunify with the child?

Appellant's Brief, at 6.

Our standard of review in challenges to decrees terminating parental rights is as follows:

> The standard of review in termination of parental rights cases requires appellate courts to accept the findings of fact and credibility determinations of the trial court if they are supported by the record. If the factual findings are supported, appellate courts review to determine if the trial court made an error of law or abused its discretion. A decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will. The trial court's decision, however, should not be reversed merely because the record would support a different result.

Interest of M.V., 203 A.3d 1104, 1111 (Pa. Super. 2019), quoting ***In re T.S.M.***, 71 A.3d 251, 267 (Pa. 2013).

Before we address the merits of Father's claims, we must consider whether he has preserved them. Though the Agency does not address waiver, we may raise the issue *sua sponte*. ***See In re Adoption of K.M.G.***, 219 A.3d 662, 668 (Pa. Super. 2019), citing ***Berg v. Nationwide Mut. Ins. Co., Inc.***,

6 A.3d 1002, 1015 (Pa. 2010). The issue of waiver is a question of law; therefore, our standard of review is *de novo* and our scope of review is plenary. ***Trigg v. Children's Hosp. of Pittsburgh of UPMC***, 229 A.3d 260, 269 (Pa. 2020).

Failure to preserve an issue in a Rule 1925(b) statement waives that issue on appeal. ***See*** Pa.R.A.P. 1925(b)(3)(iv); ***see also Interest of L.V.***, 209 A.3d 399, 413 (Pa. Super. 2019), citing ***Krebs v. United Refining Co. of Pennsylvania***, 893 A.2d 776, 797 (Pa. Super. 2006). "With respect to issues not included in a concise statement, our Supreme Court has instructed that this Court has no discretion in choosing whether to find waiver. Waiver is mandatory, and this Court may not craft *ad hoc* exceptions or engage in selective enforcement." ***In re M.Z.T.M.W.***, 163 A.3d 462, 466 (Pa. Super. 2017).

The first issue Father raises in his brief—that the trial court impermissibly shifted the burden of proof to Father to prove that he was not addicted to controlled substances—is not even suggested by the issues raised in his Rule 1925(b) statement.[2] Father's Rule 1925(b) statement challenges

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[2] In his Rule 1925(b) statement, Father presents the issues as follows:

> 1. That the trial court erred in finding that [LCOCYS] sustained its burden of proof under any provision of 23 Pa.C.S.A. [§] 2511(a)[,] as the testimony at the evidentiary hearings *sub judice* unequivocally established that the biological father had always fulfilled all prerequisites to reunification with the minor child.

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the trial court's finding that the Agency sustained its burden of proof under the Adoption Act, 23 Pa.C.S.A. § 2511(a), with Father claiming he fulfilled all prerequisites to reunification and, therefore, termination was improper under any subsection in 2511(a). Because the question involved, as stated in Father's brief, was not raised in his Rule 1925(b) statement, it is waived.

In addition, even if Father preserved the issue in his Rule 1925(b) statement, the argument section of his brief does not address the issues he raises in his statement of questions involved—specifically, burden shifting or the relevance of the timing of Father's drug use—so his first question involved is waived in any event for failure to develop the argument. ***See In re Adoption of A.P.***, 920 A.2d 1269, 1275 (Pa. Super. 2007) (finding waiver

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> 2. That the trial court erred by failing to recognize and/or not placing sufficient weight on the fact that throughout the course of the dependency proceedings, and at the time of the evidentiary hearings as aforesaid, the biological father always maintained stable housing and income sufficient so as to provide a stable and safe home environment for the minor child in question.
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> 3. That in conducting its analysis as per 23 Pa.C.S.A. [§] 2511(b), the trial court erred by failing to recognize and/or not placing sufficient weight on the fact that throughout the course of the dependency proceedings, and at the time of the evidentiary hearings as aforesaid, the biological father always visited with the minor child, creating a strong emotional bond with the child, and with no testimony being adduced as to the emotional/psychological effects upon the minor child through cessation of contact with the biological father.

Rule 1925(b) Statement, 4/28/26 (unnecessary capitalization removed). Father does not identify whether issue (2) pertains to subsection 2511(a) or (b).

where appellant failed to properly develop or cite legal authority in support of claim). The issues Father did argue in his brief, which constitute a broader challenge to the trial court's decision under subsection 2511(a), are also waived, because they are not included in his appellate brief's statement of questions involved. ***See*** Pa.R.A.P. 2116(a) ("The statement of the questions involved must state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail. . . . No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby."); ***Interest of L.V.***, 209 A.3d at 413 (failure to include issue in statement of questions involved constitutes waiver). Thus, Father failed to preserve any challenge under subsection 2511(a).[3]

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[3] In any event, even if any of Father's challenges to subsection 2511(a) had been preserved, they were meritless. At a minimum, we agree with the trial court that Father's rights were properly terminated under subsection 2511(a)(2), which permits termination on the grounds that:

> 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.

23 Pa.C.S.A. § 2511(a)(2); ***see In re Adoption of K.M.G.***, 219 A.3d 662, 672 (Pa. Super. 2019) (en banc). ***See also In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (en banc) (though trial court may grant agency's petition under multiple subsections, we need only agree with one subsection to affirm termination decree).

The trial court conducted a thorough review of the evidence presented and properly found the evidence sufficient to terminate Father's parental rights
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Father's second issue in his statement of the questions involved ostensibly contests the trial court's determination that termination best met Child's needs and welfare under subsection 2511(b), on the grounds that the

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under subsection 2511(a)(2). ***See*** Trial Court Opinion, 4/13/26, at 11–17. The court observed that the Agency removed Child from Father's care after he relapsed in his drug addiction, and that Father stipulated at the adjudicatory hearing that he had substance abuse issues requiring treatment before he could safely parent Child. ***See id.*** at 12, 16. He never made any appreciable progress toward reunification, however. ***See id.*** at 12. The court, discounting Father's testimony as incredible, declined to credit his uncorroborated assertions that he was drug-free, noting that he did not provide any records of treatment and failed to appear for 84 of his 94 drug screens. ***See id.*** at 12, 13–15. Father's protestations regarding lack of transportation and conflicts with his employment did not adequately explain his lack of participation, as the testimony reflected that he did not attend programs or screens even when he was not employed, and the Agency provided him with options for transportation he did not use, as well as a telehealth option for treatment he did not attend. ***See id.*** at 13–14, 13 n.25. He utilized the transportation assistance for visits with Child but not his court-ordered drug program and screens, even though he knew compliance with drug-related services was necessary for reunification. ***See id.*** at 13 n.25, 14, 16. The trial court reasonably inferred from Father's noncompliance that he was not maintaining his sobriety. ***See id.*** at 15.

Because Child remained in care, the trial court properly determined Father did not provide shelter, clothing, nutrition, guidance, or discipline to Child for the duration of the 27-month period during which Child was in the Agency's custody, and a child's life cannot be put on hold in the hope that a parent will summon the ability to handle parental responsibilities. ***See id.*** at 17; ***see also In re Adoption of K.M.G.***, 219 A.3d at 672 ("Parents have an 'affirmative duty' to work towards the return of their children. This 'affirmative duty,' at a minimum, requires a parent to cooperate with the child and youth agencies and complete the rehabilitative services necessary so that the parent can perform his parental duties and responsibilities." (internal citation and unnecessary capitalization omitted)); ***In re Z.P.***, 994 A.2d 1108, 1117–18 (Pa. Super. 2010) (parent must "make diligent efforts toward the reasonably prompt assumption of full parental responsibilities. A parent's vow to cooperate, after a long period of uncooperativeness regarding the necessity or availability of services, may properly be rejected as untimely or disingenuous" (internal quotation marks and citation omitted)).

testimony established that he was drug-free, stable, and ready to reunify with Child. ***See*** Appellant's Brief, at 6. This question is not fairly suggested by issue (3) of Father's Rule 1925(b) statement, which challenges, under subsection 2511(b), the trial court's alleged failure to recognize a strong emotional bond when terminating Father's rights. ***See*** fn. 2, ***supra***. Thus, Father also waived the second question presented in his brief. ***See*** Pa.R.A.P. 1925(b)(3)(iv); ***Interest of L.V.***, ***supra***. Moreover, the argument section of Father's brief focuses on the "overwhelming evidence" he claims supported a finding of a bond between Father and Child, mentioning only in passing his alleged readiness to reunify. Thus, even if Father had preserved this claim in his Rule 1925(b) statement, he waived it by failing to develop it in the argument section of his brief. ***See In re Adoption of A.P.***, ***supra***. Finally, the issue Father does argue in his brief—that the trial court failed to adequately consider his bond with Child—was not preserved in in his statement of questions involved and is, therefore, waived as well. ***See Interest of L.V.***, ***supra***.[4]

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[4] In any event, even if Father did not waive his claim under section 2511(b), it is meritless, for all the reasons cited by the trial court. Under subsection 2511(b), the trial court must consider the following:

> **Other considerations.**--The court in terminating the rights of a parent shall give primary consideration to the developmental, physical[,] and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing[,] and medical care if found to be beyond the

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> control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6)[,] or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

23 Pa.C.S.A. § 2511(b). ***See also in re T.S.M.***, 71 A.3d 251, 267 (Pa. 2013). These developmental, physical, and emotional needs include the "intangible needs of love, comfort, security, safety, and stability." ***See Interest of K.T.***, 296 A.3d 1085, 1113 (Pa. 2023). The trial court should consider termination from the perspective of the child and analyze the child's needs and welfare on a case-by-case basis. ***See id.*** at 1105.

To conduct a subsection 2511(b) analysis, a trial court must consider all factors enumerated in ***Interest of K.T.***, 296 A.3d 1085, including: the child's bond with the parent, including whether that bond is necessary and beneficial; the child's need for permanency and length of time in foster care; whether the child is in a pre-adoptive home and bonded with foster parents; and whether the foster home meets the child's developmental, physical, and emotional needs. ***See Interest of M.K.L.***, 354 A.3d 42, 70 (Pa. Super. 2026). The trial court has discretion in the weight it assigns to each factor, but all factors must be considered. ***See id.*** at 71.

The trial court properly analyzed the evidence under all these factors. It acknowledged that Father clearly loves Child but said it is the child's bond to the parent that the court must consider in determining whether breaking that bond would be harmful to the child. ***See*** Trial Court Opinion, 4/13/26, at 19. While Child has occasionally called Father "daddy," Child "primarily" calls his foster parents "mommy and daddy." ***See id.*** Child is not upset when visits with Father end and runs to his foster parents for love, comfort, and affection. ***See id.*** The trial court referenced the Agency's testimony that described Child's visits with Father as "play dates." ***See id.*** Thus, the court did not find that there was a necessary and beneficial bond between Father and Child. ***See id.***

Moreover, Child has a loving bond with his foster parents, where he has lived his entire life except the brief time when he was reunified with Father and Mother. ***See id.*** at 19–20. They are committed to providing Child with permanency, and Child has thrived in their home. ***See id.*** at 20. Father is still not willing to do what he needs to do to offer himself as someone Child can count on to provide him with security, stability, and nurture. ***See id.*** Child's bond to his foster family—and not any bond with Father—is the bond

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Because we find that Father has waived all his claims on appeal, we affirm the trial court's termination of Father's parental rights.

Decree affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/4/2026

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that should be protected. ***See id.*** Thus, even if Father did not waive all issues, we would still affirm the termination decree on its merits.