

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA  
ORPHANS' COURT DIVISION**

**IN RE:** : **NO. 2021-6733**  
: :  
**ADOPTION OF** : :  
**HS,** : :  
: :  
**minor child** : :

**OPINION AND ORDER**

**AND NOW**, this 10<sup>th</sup> day of **May, 2021**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by EL and LL on January 29, 2021. Said petition is with regard to the paternal rights of HS, born December 20, 2010. EL and LL seek to terminate the parental rights of the child's biological mother, MS, and father, JC, as a prerequisite to adopting the child. On March 10, 2021, an Order was entered appointing Dance Drier, Esquire, as counsel for MS. On March 26, 2021, an Order was entered appointing Trisha Hoover Jasper, Esquire, as counsel for JC. Angela Lovecchio, Esquire, was appointed as counsel for the Child.

A hearing on the Petition to Involuntarily Terminate MS and JC's parental rights was held on May 3, 2021. EL and LL appeared with their counsel, Mary Kilgus, Esquire. MS appeared with her counsel, Dance Drier, Esquire. JC failed to appear despite his appointed counsel indicating that she had made multiple attempts to contact him with regard to this matter. The Court was satisfied that JC had sufficient notice of the hearing and therefore excused Attorney Jasper from the proceeding. Angela Lovecchio, Esquire, counsel for HS, was also present at the hearing.

### **Finding of Facts**

1. HS (“Child”) was born on December 20, 2010. The Child currently resides with her maternal great Aunt and Uncle, LL and EL (collectively, “L’s”) at 12025 Rte. 220 Hwy, Hughesville, Pennsylvania.

2. The Child’s biological father is JC (“Father”). Father’s last known address is 109 Elm Street, Selinsgrove, Pennsylvania.

3. The Child’s biological mother is MS (“Mother”). Mother is currently residing at 101 Boak Avenue, Lot 4, Hughesville, Pennsylvania.

4. At the time of Child’s birth, Mother and Father were not married, nor have they ever been married.

5. In 2013, the Child was placed in the physical custody of maternal grandmother, TS (“Grandmother”).

6. In 2017, Father was charged criminally with aggravated assault and endangering the welfare of a child. His victim was the Child who is the subject of this termination hearing. As a bail restriction, Father was to have no contact with the Child.

7. Father was subsequently indicated as a child abuse perpetrator as a result of the incident.

8. In July of 2017, Mother called LL and asked her to keep another Child of Mother’s because she was going to be homeless. When LL arrived at the home of Grandmother to pick up that child, Grandmother indicated that the Child who is the subject of this matter would “want to go too.”

9. The reason Grandmother sent the Child to EL and LL with her sibling was because she and Mother had bailed Father out of jail and he was staying at Grandmother's home but he was not permitted to have contact with the Child.

10. The Child lived with EL and LL from July 2017 – December 2017, when an Order was entered returning physical custody to Grandmother after Father moved out of her home. Mother was granted alternating Saturdays from 10:00 a.m. until 6:00 p.m., and her visits were required to be supervised. Father, due to his bail restrictions, was prohibited from having any contact with the Child at this time.

11. From approximately July 2017-February 2019, Mother resided in the home of JH, who is the mother of LL. Mother would see the Child when the families got together for visits.

12. In May of 2018, Children and Youth became involved and removed the Child from Grandmother's home. The Child was placed in EL and LL' home.

13. On September 13, 2018, Father pled nolo contendere to the charge of endangering the welfare of a child, with regard to the incident of abuse involving this Child. Father was sentenced to a term of probation.

14. On April 17, 2019, an Order was entered after a custody conference granting EL and LL legal custody of the Child, with the requirement that they notify Mother and Father of any doctor appointments for the Child. EL and LL were granted primary physical custody of the Child. Mother and Grandmother were granted physical custody of the Child each Friday from 4:00 p.m. until 7:00 p.m. These visits were to take place in the community and not at the home of either Mother or Grandmother. Father's was granted supervised visitation at the Children and Youth building, the exact days and times to be determined by agency staff.

15. On April 1, 2020, this Court entered an Order suspending Father's visits at the Agency due to the Agency's suspension of private custody case supervisions during the Covid-19 pandemic.

16. At a hearing on May 29, 2020, all parties indicated that Father had been having visits with the Child through social media after his in-person supervised visits were canceled. Father was informed of his right to file a Petition for Modification if he wished to resume in-person visitation.

17. On June 17, 2020, EL and LL filed a Petition to Modify Custody, alleging that Mother and Grandmother were estranged and Mother was at an unknown address.

18. On June 23, 2020, Grandmother filed a Petition for Modification of Custody Order, requesting additional time with the Child in the form of a full day of visitation on a weekend day, and that she not be required to share her visitation time with Mother.

19. On August 26, 2020, an Order was entered granting Mother a period of three hours of physical custody each week, to be agreed upon by Mother and EL and LL, separate and apart from Grandmother's three hours of physical custody each week. Father was granted videochats with the Child on alternating Thursdays.

20. A custody trial on the Petitions for Modification was scheduled for March 23, 2021. Due to the pending Petition for Involuntary Termination of Parental Rights, counsel for EL and LL filed a Motion to Stay the custody trial, which was addressed at the time scheduled for the custody trial.

21. At the March 23, 2021, hearing, all parties agreed that in the interest of judicial economy, sufficient evidence would be presented at the hearing on the Petition for Involuntary Termination of Parental Rights to enable the Court to make a decision

regarding the Petitions to Modify Custody in the event the Court did not grant the request for termination of parental rights. Father participated in this hearing via telephone.

22. Despite numerous Orders in both the custody and adoption matters directing her to do so, Mother never contacted Angela Lovecchio, Esquire, the Guardian Ad Litem and subsequent legal counsel for the Child. Father also never reached out to Attorney Lovecchio during this process.

23. Despite having the ability under the Court Order to exercise her visits with the Child in person, Mother chose to exercise the majority of her custodial periods via FaceTime.

24. Father's last contact with the Child was on New Year's Day of 2021. Prior to that, his calls were sporadic and there were several weeks he did not call the Child on the designated day/time.

25. Neither Mother nor Father have paid any financial support to EL and LL, either informally or through a court order, for the care they have provided for the Child.

26. Neither Mother nor Father have attended a doctor appointment for the Child for at least a year and a half.

27. Neither Mother nor Father have attended a school conference for the Child.

28. The Child has lived in EL and LL' home continuously since May of 2018.

29. The Child's grades, appearance, and behavior at school have improved dramatically since she was removed from Grandmother's home and placed with EL and LL.

30. The Child is very bonded with EL and LL. She calls EL “Doo” and LL “Mama” or “Lisa.” She calls Mother “Mom.”

31. EL and LL have provided for all of Child’s physical and emotional needs continuously since May of 2018.

32. The Child expressed to her Guardian Ad Litem, and later her appointed counsel, that she loves EL and LL and wishes to remain in their home.

33. EL and LL are ready, willing, and able to adopt the Child.

**Discussion**

EL and LL argue that the basis for termination in this case may be found in 23 Pa.C.S. §2511(a)(1), which provides as follows:

§2511. Grounds for Involuntary Termination

(a) GENERAL RULE.--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

(1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

A court may terminate parental rights under Section 2511(a)(1) where a parent demonstrates a settled purpose to relinquish parental claim to a child **or** fails to perform parental duties for at least six months prior to the filing of the termination petition. **In the Interest of C.S.**, 761 A.2d 1197, 1201 (Pa. Super. 2000). When determining whether to terminate the rights of a parent, the Court should consider the entire background of the case and not simply:

mechanically apply the six month statutory provision. The court must examine the individual circumstances of each case and consider all explanations offered by the parent facing termination of his . . . parental rights, to determine if the evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination.

**In re: B.N.M.**, 856 A.2d 847, 855 (Pa. Super. 2004), appeal denied, 582 Pa. 718, 872 A.2d 1200 (2005) citing **In re: D.J.S.**, 737 A.2d 283, 286 (Pa. Super. 1999).

In determining what constitutes parental duties, the Pennsylvania Supreme Court has said:

There is no simple or easy definition of parental duties. Parental duty is best understood in relation to the needs of a child. A child needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the child. Thus, this Court has held that the parental obligation is a positive duty which requires affirmative performance. This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child. Because a child needs more than a benefactor, parental duty requires that a parent "exert himself to take and maintain a place of importance in the child's life."

With these principles in mind, the question whether a parent has failed or refused to perform parental duties must be analyzed in relation to the particular circumstances of the case. A finding of abandonment, which has been characterized as "one of the most severe steps the court can take," will not be predicated upon parental conduct which is reasonably explained or which resulted from circumstances beyond the parent's control. It may only result when a parent has failed to utilize all available resources to preserve the parental relationship.

**In re: Burns**, 379 A.2d 535, 540 (Pa. 1977)(citations omitted).

The Court finds as of the date the Petition for Involuntary Termination of Parental Rights was filed, both Mother and Father failed to perform their parental duties for a period well in excess of six (6) months. Additionally, although Mother testified that she eventually wants the Child - as well as her other two children who are the subject of separate termination of parental rights/adoption cases – to live with her, her actions have shown otherwise and this Court finds that she has evidenced a settled purpose to relinquish parental claim to the Child. The Court also finds Father has evidenced a settled purpose to relinquish his parental claim to the Child.

A parent has an affirmative duty to take an active role in a child's life. Neither Mother nor Father has satisfied this obligation. The Child has been in the custody of EL and LL since May of 2018, when Lycoming County Children and Youth instituted a dependency action – not against Mother because the Child was not even living with Mother at that time due to a custody order – but against Grandmother and placed her with them. Thus, in order to satisfy her obligation to perform parental duties, Mother would have to ensure that the Child was properly fed and had good hygiene, provide stable housing, make and attend medical appointments, be engaged in her education, provide financial support for the Child, and comfort her when she was sick or scared. LL testified that Mother purchased a pair of shoes for the Child last year, and also purchased a pair of pajamas that the Child chose to wear as a Halloween costume. Other than that, Mother has not paid any financial support to EL and LL to assist them in raising her Child, either through purchasing basic necessities for the Child or by providing cash payments to EL and LL to be used for the benefit of the Child. When asked why she had not provided any financial support for the Child, Mother first responded by stating “they never asked,” but also acknowledged it was her duty to do so. Mother testified that she did buy other items and gifts for the Child, but did not give them to EL and LL because she believed they would not allow the Child to wear any clothes or play with any toys she purchased. Her assertion that she purchased these items for use/wear in her home was ironic, given the fact that Mother very rarely exercised her periods of custody in-person. This Court finds that Mother has failed to perform her parental duties for well in excess of 6 months and the Child has had to rely on EL and LL to provide for all of her physical and emotional needs for the past three years.

Throughout the time the Child has been in the custody of EL and LL, Father also has not been performing parental duties. For a portion of this time, he was prohibited from having any contact with the Child as a condition of his bail associated with criminal charges in which the Child was the victim. After his criminal matter was resolved and his probation sentence complete, Father was still limited to supervised contact with the Child due to being an indicated perpetrator of child abuse. Throughout the Child's life, and especially while she has resided with EL and LL, Father has failed to provide any financial support for the benefit of the Child. He has not attended any medical appointments or school conferences for the Child. He has never comforted her when she was sick or scared. In short, Father has utterly failed to perform any parental duties for the Child.

This Court further finds that EL and LL have established that both Mother and Father have evidenced a settled purpose of relinquishing parental claim to the Child. When the Child was first placed with EL and LL by Children and Youth, and later remained there with the agreement of all parties to the custody action, it was with the understanding that it would be a temporary situation until Mother got back on her feet and found stable housing. However, nearly 3 years elapsed before EL and LL finally filed the Petition for Involuntary Termination of Parental Rights. During that time, Mother bounced from several residences, including her mother's and her step-grandmother's homes. Mother testified that she has lived in a 3 bedroom trailer since March of 2020 and has a "written agreement" with the owner. Although speculation was raised about others living in or staying at the trailer, Mother testified that she lives alone and that she filed a Petition for Modification of Custody with the expectation that she would reside

there with all three of her children. While the docket does not reflect Mother filing such a petition, she has stated her wish for more time when other parties' petitions were before the Court. Mother testified that she would like custody every other weekend "to prove to people she can be a mom."

However, Mother has had many years to "prove to people she can be a mom" and has intentionally chosen to prioritize other things in her life. Mother has continued to have a period of physical custody for only three hours each week. The docket does not reflect that Mother ever filed her own Petition to Modify Custody in an attempt to gain additional custodial time with the Child. Despite having no court-ordered restrictions on in-person visits, Mother chose to exercise the majority of her custody time via FaceTime, which is not conducive to establishing and maintaining a bond with the Child. During these FaceTime calls, Mother rarely took advantage of the full 3 hours she was allotted and often did not call at all. Notably, Mother has never reached out to the Guardian Ad Litem/counsel for the Child during the pendency of the custody and adoption matters. When questioned about her refusal to do this, despite being directed to in numerous Court orders, Mother testified that she was "busy getting a job and cleaning her home getting it ready for her kids."

This Court finds that what was originally intended to be a temporary arrangement for custody of the Child has evolved into a three year situation, and Mother has taken very few steps, if any, to regain custody of the Child. Mother testified that she is supposed to be "100% stable" before she can take care of kids, but the simple fact that Mother has done nothing at all to expand her custodial time despite having two jobs and living in the same three bedroom trailer for over a year is indicative of her evidencing a settled purpose to relinquish claim to the Child.

Father's periods of custody under the controlling custody Order were to be supervised at the Children and Youth Agency building. When those visits were suspended due to the pandemic, Father began exercising his visits every other week through FaceTime. His visits were not consistent, and at times he did not call during his allotted time. He has had absolutely no contact with the Child since New Year's Day of 2021. He has not reached out to EL and LL to inquire about the Child's health, education, or well-being. He has not petitioned the Court to restore his in-person visits with the Child. Despite having proper notice and multiple attempts by his appointed counsel to contact him, Father failed to appear at the hearing on the Petition for Involuntary Termination of Parental Rights. All of these factors have contributed to the Court's finding that Father has evidenced a settled purpose to relinquish parental claim to the Child.

This Court finds that grounds for termination of both Mother's and Father's parental rights exist under 23 Pa.C.S. §2511(a). As the statutory grounds for termination have been met, the Court must also consider the following:

23 Pa.C.S. § 2511(b) 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 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.

The Court must take into account whether a bond exists between the child and parent, and whether termination would destroy an existing, necessary and beneficial relationship. **In the Interest of C.S.**, *supra*, at 1202. When conducting a bonding

analysis, the Court is not required to use expert testimony. In re: K.K.R.-S., 958 A.2d 529, 533 (Pa. Super. 2008) (citing In re: I.A.C., 897 A.2d 1200, 1208-1209 (Pa. Super. 2006)). “Above all else . . . adequate consideration must be given to the needs and welfare of the child.” In re: J.D.W.M., 810 A.2d 688, 690 (citing In re: Child M., 681 A.2d 793 (Pa. Super. 1996), appeal denied, 546 Pa. 674, 686 A.2d 1307 (1996)).

Before granting a petition to terminate parental rights, it is imperative that a trial court carefully consider the *intangible* dimension of the needs and welfare of a child--the love, comfort, security and closeness--entailed in a parent-child relationship, as well as the tangible dimension. Continuity of relationships is also important to a child, for whom severance of close parental ties is usually extremely painful. The trial court, in considering what situation would best serve the children’s needs and welfare, must examine the status of the natural parental bond to consider whether terminating the natural parents’ rights would destroy something in existence that is necessary and beneficial.

In the Interest of C.S., *supra.*, at 1202 (citations omitted).

In the present case, the Court finds that there was no evidence presented regarding a bond between the Child and Father, other than the fact that LL testified that the Child used to be disappointed when Father would not call at his scheduled time but now she has come to expect it. Given Father’s limited contact with the Child, as well as his indicated report of child abuse against the Child, this Court finds that there is not a necessary and beneficial bond between Father and Child. If any bond whatsoever exists between Father and the Child, the severance of that bond will not cause the Child irreparable harm in light of the strong and stable bond the Child has developed with EL and LL, who have been her parental figures and provided her with stability and security for at least three years.

Additionally, there was very little evidence presented of any bond between the Child and Mother. Although there was testimony that she does call Mother “Mom,” this

Court finds that may be only because that is how EL and LL refer to Mother when speaking about her. Mother is not a “mom” to the Child in the traditional sense of the word. Additionally, the existence of some bond with Mother does not necessarily defeat termination of her parental rights. **In re K.Z.S.**, 946 A.2d, 753, 764 (Pa.Super. 2008). The question becomes whether the bond between the Child and Mother is the *one worth saving* or whether it could be sacrificed without irreparable harm to the Child. **Id.** (emphasis added). Termination of Mother’s rights would not destroy an existing necessary and beneficial relationship as the bond, if any, between Mother and Child is not anywhere near as strong as the bond between Child and EL and LL. There was copious evidence that the Child is very bonded with EL and LL, with whom she has lived consistently for three years. It is EL and LL, and not Mother, who have provided love, guidance, and support for the Child in addition to fulfilling her basic physical needs. It is under the care of EL and LL, and not Mother, where the Child has thrived in school. It is evident to the Court that EL and LL deeply love and care for the Child and to remove her from their home would destroy the only continuity she has had in the past several years. The Child has indicated to her legal counsel that she very much desires to remain in the home of EL and LL, who have stepped in and assumed the parental responsibilities that Mother and Father have utterly failed to perform and have evidenced a settled purpose of relinquishing.

The Court is satisfied that the bond between the Child and EL and LL is the primary bond to protect. EL and LL understand the rights and responsibilities associated with adopting the Child, and that termination of Mother’s and Father’s parental rights and allowing the adoption by EL and LL to proceed is in the best interest of the Child.

**Conclusions of Law**

1. The Court finds that EL and LL have established by clear and convincing evidence that MS's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that EL and LL have established by clear and convincing evidence that JC's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

3. The Court finds that EL and LL have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of HS will best be served by termination of MS's parental rights.

4. The Court finds that EL and LL have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of HS will best be served by termination of JC's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA  
ORPHANS' COURT DIVISION**

**IN RE:** : **NO. 2021-6733**  
: :  
**ADOPTION OF** : :  
**HS,** : :  
: :  
**minor child** : :

**DECREE**

**AND NOW**, this 10<sup>th</sup> day of **May, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of MS, held on May 3, 2021, it is hereby **ORDERED and DECREED**:

- (1) That the parental rights of MS be, and hereby are, terminated as to the child above-named;
- (2) That the welfare of the child will be promoted by adoption; that all requirements of the Adoption Act have been met; that the child may be the subject of adoption proceedings without any further notice to the natural mother.

**NOTICE TO NATURAL PARENTS**  
**PENNSYLVANIA ADOPTION MEDICAL HISTORY REGISTRY**

This is to inform you about an adoption law provision relating to medical history information. As the birth parent of a Pennsylvania born child who is being, or was ever adopted in the past, you have the opportunity to voluntarily place on file medical history information. The information which you choose to provide could be important to this child's present and future medical care needs.

The law makes it possible for you to file current medical information, but it also allows you to update the information as new medically related information becomes available. Requests to release the information will be honored if the request is submitted by a birth child 18 years of age or older. The law also permits that the court honor requests for information submitted by the adoptive parents or legal guardians of adoptees who are not yet 18 years of age. All information will be maintained and distributed in a manner that fully protects your right to privacy.

You may obtain the appropriate form for you to file medical history information by contacting the Adoption Medical History Registry. Registry staff are available to answer your questions. Please contact them at:

Department of Public Welfare  
Pennsylvania Adoption Information Registry  
P.O. Box 4379  
Harrisburg, PA 17105-17111  
Telephone: 1-800-227-0225

Medical history information forms may also be obtained locally by contacting one of the following agencies:

1. County Children & Youth Social Service Agency
2. Any private licensed adoption agency
3. Register & Recorder's Office
4. Online at [www.adoptpakids.org/Forms.aspx](http://www.adoptpakids.org/Forms.aspx)

By the Court,

Joy Reynolds McCoy, Judge

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:   
**ADOPTION OF** :   
**HS,** :   
:   
**minor child** :

**DECREE**

**AND NOW**, this 10<sup>th</sup> day of **May, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JC, held on May 3, 2021, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JC be, and hereby are, terminated as to the child above-named;
- (2) That the welfare of the child will be promoted by adoption; that all requirements of the Adoption Act have been met; that the child may be the subject of adoption proceedings without any further notice to the natural father.

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By the Court,

Joy Reynolds McCoy, Judge