

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

**IN RE:** : **NO. 2020-6703**  
:   
**JW,** :   
:   
**Minor child** :

**OPINION AND ORDER**

**AND NOW**, this 20<sup>th</sup> day of **January, 2021**, before the Court is CW and JW's ("Petitioners") Petition for Involuntary Termination of Parental Rights of AW ("Mother") filed on June 18, 2020, with regard to JW ("Child"). After several continuance requests filed by Mother, a hearing on the Petition for Involuntary Termination of Parental Rights was held on January 11, 2021. Mother was present and represented by Dance Drier, Esquire; Petitioners were present and represented by Melody Protasio, Esquire; and Tiffani Kase, Esquire, Guardian *Ad Litem* and counsel for the Child was present at the hearing. Petitioners have named two potential biological fathers in their Petition, JW and AG, but neither have been involved in the Child's life or appeared for the hearing.

**Findings of Facts**

Mother met the Petitioners in 2016 while the Petitioners were working at the American Rescue Workers when Mother was seeking services. Mother confided to the Petitioners that she was pregnant and the Petitioners spoke to Mother about her options and offered to help. After Mother left the American Rescue Workers, the Petitioners did not have contact with mother for several months. The next contact with Mother was when she was in the hospital for the birth of the Child on September 20, 2017. The identity of the biological father was and is unknown. Because Mother was incarcerated and required to complete her sentence after she gave birth, the hospital personnel

explained that Children and Youth Services would be called to take custody of the Child. To avoid this, Mother called the Petitioners asking them to take custody of the Child, which they did.<sup>1</sup> Petitioners took the Child home with them from the hospital on September 22, 2017.

At some point thereafter, Petitioners, through their attorney, sent Mother Consent to Adopt paperwork, which Mother refused to sign. Rather, in December of 2017, Mother sent Petitioners a letter stating that she will sign the adoption paperwork in exchange for the amount of \$9,999. Mother ultimately pled no contest to charges brought against her for this crime. She was placed on probation for three years and was ordered to have no contact with the Petitioners. Mother was released from prison in August 2018.

On August 20, 2019, Mother underwent a psychological evaluation which revealed Mother's extensive criminal history, including child endangerment, and mental health history, including severe depression and suicide attempts.

After Mother was released from prison, she filed a custody action in Lycoming County. The Honorable Joy Reynolds McCoy awarded sole legal and physical custody of the Child to Petitioners but granted Mother supervised visitation for one hour every other week. Out of fifteen total possible visits with the Child, Mother appeared for only seven of them. December 16, 2019 was the last time Mother saw the Child because she was incarcerated shortly thereafter. A custody trial was scheduled for January 29, 2020

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<sup>1</sup> While not entirely relevant to the Court's analysis, it should be noted that the parties' recollections differ as to the plan for the adoption of the Child. Petitioners state that they made it extremely clear to Mother that they would only take custody of the Child with the understanding that it would be a permanent arrangement, to which Mother allegedly repeatedly agreed. Mother, on the other hand, states that she intended for the Petitioners to have custody of the Child only until she was released from prison and was able to obtain housing and employment.

at which point Mother, through her attorney, agreed that, due to being incarcerated, she was in no position to have any custody of the Child. Mother's visitation was suspended at that point. Mother was released from prison in February 2020.

Petitioners filed their Petition for Involuntary Termination of Parental Rights on June 18, 2020. On September 7, 2020, Mother, despite being under a no contact order, contacted the Petitioners via text message and email demanding to see the Child. Mother did not file any motions with the Court regarding custody of the Child from the time she was released from prison in February 2020 until October 2020 when Mother filed for custody modification. At the termination hearing, Mother testified that she now lives in Erie County, Pennsylvania, is on appropriate medications, has stable housing and employment, is in therapy, and is doing great. Mother remains on probation.

### **Discussion**

Petitioners 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.

In order to involuntarily terminate Mother's parental rights, Petitioners must prove the above subsection by clear and convincing evidence.

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) (emphasis added). 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, 872 A.2d 1200 (Pa. 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).

It may be true that Mother loves the Child and has wanted to be a good mother. However, it is clear that she simply does not have the capacity to give him what he

needs. By Mother's own admission, the Child was about two years old the first time he met her. Mother has seen the Child only seven times since then, the last time being over a year ago. In his over three years of life, other than bringing food for him a total of seven times, Mother has *never* provided the Child with any type of parental care. She has *never* bathed him, put him to bed, taken him to doctors' appointments, bought him gifts or cards, clothed him, or in any sense of the word, cared for him.

Mother has been in prison for a significant amount of the Child's life. Currently, she is on probation for attempting to terminate her parental rights to the Child in exchange for money. Mother's actions, or inactions, show that she has not been capable or available to care for the Child and, despite being given every opportunity to prove she had the ability to care for him, Mother has made little to no affirmative effort to be with him. It is true that Mother filed a petition to modify custody in October of 2020. However, this petition comes eight months after she was released from prison and, coincidentally, four months after the Petition for Involuntary Termination was filed. The Court finds that not only is the Petition to Modify Custody untimely in regard to the current Petition, it does not reflect that Mother has taken any steps to rectify any of her failures to parent the Child.

The Court hereby finds by clear and convincing evidence that the Petitioners have fulfilled the requirements of 23 Pa.C.S. §2511(a)(1) in that Mother has both evidenced a settled purpose to relinquish parental claim to the Child *and* failed to perform her parental duties for at least six months prior to the filing of the termination petition.

As the Court has found that statutory grounds for termination have been met under 23 Pa. C.S. §2511(a)(1), the Court must now 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 (Pa. Super. 2002). A parent’s own feelings of love and affection for a child do not prevent termination of parental rights. **In re: L.M.**, 923 A.2d 505, 512 (Pa. Super. 2007).

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).

Since his birth, Mother did not see the Child until he was about two years old. When her visits with him began in 2019, she saw him for a total of seven hours over a course of several months. The last time Mother has seen him or even spoken to him was December 16, 2019 – over a year ago. The Child has lived for over 26,208 hours. Mother has been present in his life for *seven* of those. There was testimony that the Child has no idea who Mother is and in fact considers Petitioners his mother and father. Therefore, because a bond has never been established between Mother and the Child, there is no bond that can be broken.

The Court is satisfied that termination of Mother's parental rights would not destroy an existing bond or cause any trauma to the Child and that permanency in the form of adoption by those who have met his needs since the time of his birth is in the best interest of the Child.

**Conclusions of Law**

1. The Court finds that the Petitioners have established by clear and convincing evidence that AW, by conduct continuing for a period of at least six months immediately preceding the filing of the petition has evidenced a settled purpose to relinquish parental claim to the Child and has failed to perform parental duties pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that the Petitioners have established by clear and convincing evidence that no bond exists between AW and the Child and that the developmental, physical and emotional needs and welfare of the Child will be best served by the termination of her parental rights pursuant to 23 Pa.C.S. §2511(b).

Accordingly, the Court will enter the attached Decree.

By the Court,

Ryan M. Tira, Judge

CC: Melody Protasio, Esquire  
Dance Drier, Esquire  
Tiffani Kase, Esquire



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**DECREE**

**AND NOW**, this 20<sup>th</sup> day of **January, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of AW, held on January 11, 2021, it is hereby ORDERED and DECREED:

- (1) That the parental rights of AW 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.

**NOTICE TO NATURAL PARENT**

**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 Human Services  
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,

Ryan M. Tira, Judge

CC: Melody Protasio, Esquire  
Dance Drier, Esquire  
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