

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

**IN RE:** : **NO. 6212**  
:   
**ADOPTION OF** :   
:   
**D.J.E** :

*Dated: July 7, 2010*

**OPINION AND ORDER**

Before the Court is a Petition for Involuntary Termination of Parental Rights filed by the Mother of D.J.E., A.B.L., on or about March 18, 2010. A.B.L. seeks to terminate the parental rights of D.J.E.'s biological father, B.J.E., as a pre-requisite to having him adopted by her husband, R.J.L., III. A hearing on the Petition was held on July 7, 2010. Both counsel were given the opportunity to file briefs by July 16, 2010.

**FINDINGS OF FACT**

1. D.J.E. was born on April 26, 2005. He currently resides with his Mother and step-father in Williamsport, Lycoming County, Pennsylvania.
2. D.J.E.'s mother is A.B.L., born on March 25, 1984, and is currently 26 years old.
3. Mother married R.J.L., III, on February 27, 2010.
4. R.J.L., III, was born August 6, 1987, and is 22 years of age.
5. D.J.E.'s Father is B.J.E.
6. Father resides in Raleigh, North Carolina.

7. Father and Mother were married on May 25, 2005, and were divorced on May 2, 2007.

8. In May, 2005, Mother and Father moved in together with the minor child and lived together until June, 2006.

9. Mother and Father separated in June, 2006, after Mother obtained a Protection from Abuse Order against Father.

10. The Protection from Abuse Order filed in Lycoming County dated June 15, 2006, granted Mother primary physical custody of D.J.E. and awarded Father partial custody as the parties were able to agree. The parties were permitted under the Protection from Abuse Order to have communication for custody purposes only. The Protection from Abuse Order expired on December 15, 2007.

11. Shortly after the Protection from Abuse Order was entered, a visit was arranged between the parties for the Father to see the minor child. During that visit a dispute arose between the parties which caused Father to cut short his visit with the child.

12. A second visit was set up between Mother and Father in August, 2006, for Father to see the child. Father called and canceled the visit.

13. Mother continues to reside at the same residence she resided at the time the parties lived together and continues to have the same cell phone number.

14. Since July, 2006, Father has sent the minor child two (2) Christmas cards, one in December, 2008, that the paternal grandparents brought to the child and the second in December, 2009, which the Father mailed to the child.

15. Father testified that he has made no efforts to schedule or attend any visits with his son since August, 2006.

16. Father testified he has not sent his son a birthday card because it is difficult for Father because of the memories of what he has lost and what his son has lost.
17. Father further testified that he has sent the child no presents at all.
18. Father admits that he has done nothing to let D.J.E. know that he loves and cares about him.
19. When questioned regarding his bond with his son, Father stated that there was “not a strong bond, if any.”
20. The paternal grandparents have maintained a relationship with the minor child.
21. The paternal grandparents see the minor child approximately one time per month and call the child more frequently.
22. The paternal grandparents provide the minor child with gifts and purchase items for him such as clothing.
23. Father has paid child support for the minor child through the Lycoming County Domestic Relations Office.
24. All of Father’s payments of child support have been through wage attachment or IRS intercept.
25. In the past, there has been a history of gaps in Father’s consistency of payments due to periods of unemployment.
26. In May, 2010, Father’s Federal Income Tax Refund was intercepted and a payment in excess of \$2,000.00 was placed on Father’s arrears reducing his arrears to approximately \$680.00.

27. Since November, 2009, Father's child support payments have been consistent due to his obtaining his current employment.

28. In March, 2009, Mother emailed Father through Facebook indicating that she was aware Father wanted to get in touch with her regarding D.J.E. and indicating that Father was welcome to call.

29. Father responded to the email through Facebook on March 18, 2009, indicating "I do not have your number because I could care less about you. If you wish to converse with me further, please learn to be civil or I will never again have another conversation with you."

30. Mother did not hear from Father again until November 12, 2009, when Father sent an email to Mother inquiring of Mother how his son was doing and including a photograph of himself so the child could know what he looked like.

31. On November 13, 2009, Mother responded to Father's email advising him as to how the minor child was doing and indicating to Father that she had provided the child with his Christmas card and his photograph.

32. On November 18, 2009, Father responded by email at which time he requested a photograph of the child indicating that he would very much like to see the child, but for now the only way he would be able to do so is through a photo. He further requested that the Mother continue to advise him as to how the child was doing.

33. On November 23, 2009, Father again emailed Mother inquiring as to why Mother had not responded to his most recent email and provided a picture of D.J.E. Father also inquired as to whether or not the child had medical coverage. Father also

indicated that if he and Mother could not discuss things as adults, he would get the Courts involved.

34. On November 23, 2009, Mother responded by email answering Father's questions concerning the medical insurance and indicating that she did not wish to give Father a picture of D.J.E. due to the fact that he had not been in his life for the past several years. Mother indicated to Father that he should get the Courts involved if he felt that's what he needed to do.

35. On December 1, 2009, Father sent further email to Mother again discussing medical insurance and further requesting that he be permitted to have a photograph of the child because "I have a right to see him, even if it's only a photograph, especially since I am currently unable just to pop on up there and visit."

36. On January 1, 2010, Mother forwarded an email to Father advising Father of her intentions that her husband adopt D.J.E.

37. On January 4, 2010, Father responded indicating that he had no intention of giving up his rights as a father.

38. Since sending the email on the January 4, 2010, Father made no further attempts to contact Mother until such time as Father appeared at the first hearing scheduled in this matter on a voluntary termination of parental rights on May 21, 2010.

39. D.J.E. is closely bonded to Mother and his step-father, R.J.L., III.

40. D.J.E. refers to his step-father as "dad".

41. D.J.E. does not inquire about his natural father.

42. When D.J.E. was shown the photograph sent by his father, D.J.E. referred to him as the "scary guy".

## DISCUSSION

Mother argues 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).** 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 of the petition to involuntarily terminate his parental rights, the Father had failed to perform his parental duties for a period of time in excess of six months and has evidence of settled purpose of relinquishing his parental claim. Through his own admission, Father admits that he has failed to make any efforts to have contact with his child since August, 2006. Father's reasons for not sending his child birthday cards or gifts was due to the fact that it is too difficult for Father to do these things because of the memories of what he has lost with his son. Father's counsel attempts to argue that the emails that Father submitted to Mother in November and December, 2009, are sufficient to overcome the allegation that Father failed to perform his parental duties for a period of time in excess of six months and has evidence of settled purpose of relinquishing his parental claim. The Court does not agree. Though Father did send several emails to Mother, his emails in no way satisfy his lack of performing parental duties since August, 2006. Father made no efforts to attempt to see the child, nor did he take any actions to obtain court intervention despite his threats to Mother that he would do so. In fact, when faced with the knowledge in January, 2010, that Mother

intended to proceed to terminate his parental rights, Father did absolutely nothing until May, 2010, when he appeared at the hearing.

Father has paid child support through a wage attachment. At times, his payments have been sporadic. Presently, he is making regular payments as a result of his current employment. Payments of child support, without more, do not constitute performance of parental duties.

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)).** 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).**

In the present case, Father himself has admitted that there is "not a strong bond, if any" between him and the minor child. The Court further finds that based upon all of the testimony presented by the parties, it is clear that Father has no bond with the child. Further, termination of his rights would not destroy an existing, necessary and beneficial relationship. There currently exists no relationship between the Father and D.J.E.

Father argues that the Court should consider the bond between the parental grandparents and the child when determining whether Father's parental rights should be terminated. In the present case, it is clear that the paternal grandparents have maintained a relationship with the child and have a bond with the child. However, the Court finds no authority to support Father's position. There exists absolutely no relationship between Father and D.J.E., and Father cannot substitute his parents' relationship with the child for his lack of relationship with the child.

## CONCLUSIONS OF LAW

1. The Court finds that A.B.L. has established by clear and convincing evidence that B.J.E.'s parental rights should be involuntarily terminated under 23 Pa.C.S. §2511(a)(1).

2. The Court finds that A.B.L. has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of D.J.E. will be best served by termination of B.J.E.'s parental rights.

Accordingly, the Court will enter the attached decree.

By the Court,

Joy Reynolds McCoy, Judge

JRM/jrr

cc. Patricia Shipman, Esquire  
Trisha Hoover, Esquire  
Mark Taylor, Esquire  
Gary Weber, Esquire