

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

**IN RE:** : **NO. 6309**  
:  
**ADOPTION OF** :  
**ACS and** :  
**BKS,** :  
                  **Minor children** :

**OPINION AND ORDER**

**AND NOW**, this 28<sup>th</sup> day of June, 2012, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, DS, in regard to the rights of her children, ACS and BKS, on March 20, 2012. Mother seeks to terminate the parental rights of the children's biological father, TS, as a prerequisite to having the children adopted by her fiancé, EM. A hearing on the Petition was held on June 27, 2012.

**Findings of Facts**

1. ACS was born on November 8, 2007 in Lewisburg, Union County, Pennsylvania. He currently resides with his Mother, DS, and her Fiancé, EM, at 928 West Fourth Street, Apartment 3, Williamsport, Lycoming County, Pennsylvania.
2. BKS was born on October 11, 2009 in Lewisburg, Union County, Pennsylvania. He currently resides with his Mother, DS, and her Fiancé, EM, at 928 West Fourth Street, Apartment 3, Williamsport, Lycoming County, Pennsylvania.

3. The children's Mother is DS who was born on October 7, 1989. She is currently engaged to EM who was born on May 23, 1987. DS and EM are to be married September 15, 2012.

4. The children's Father is TS. Father resides at 212 Main Street, York Springs, Pennsylvania.

5. Mother and Father began dating in June, 2006. Mother and Father married in December, 2008.

6. Mother and Father separated in July or August, 2009, before the birth of BKS, and divorced in March, 2010.

7. In June or July, 2010, Mother and Father tried to recommit to each other. After two or three weeks, Mother and Father decided that their relationship had ended.

8. After the divorce, Mother had custody of the children. Father had informal visitation.

9. Mother and children moved to 101 Brown Avenue, Milton, Pennsylvania to live with her Mother, DG.

10. Father moved in with his Father, WS; Step-Mother, DS; and younger brother at 212 Main Street, York Springs, Pennsylvania.

11. The divorce documents did not include a custody arrangement between Mother and Father.

12. Father went to the hospital the day after BKS was born. Father was not at the hospital for BKS's actual birth.

13. When BKS was born, Father questioned his paternity. Father requested a paternity test. The result confirmed that the child was Father's.

14. Both parties recall five separate occasions when Father had visitation with ACS and BKS aside from visiting BKS the day after he was born.

15. The first visitation was when Mother went to Colorado. Mother initiated the visit by calling Father to ask Father to watch the children. Father kept ACS and BKS from June 31, 2010 until July 9, 2010.

16. The second visitation was for Mother's twenty-first birthday. Mother initiated the visit by calling Father to ask Father to watch the children. Father kept ACS and BKS from October 5, 2010 until October 9, 2010.

17. The third visitation was during BKS's first birthday party at 101 Brown Avenue, Milton, Pennsylvania, DG's house. The birthday party was in October, 2010.

18. In November, 2010, before the fourth visitation with Father, Mother and children moved to 2465 Lycoming Creek Road, Apartment 11, Williamsport, Pennsylvania with EM.

19. The fourth visitation was during Christmas, 2010. Father requested to spend Christmas morning with ACS and BKS. Mother was traveling with the children. She agreed to drop off the children with Father on Christmas night. Mother asked Father to keep the children for four or five days. Father agreed and kept the children until before New Year's Eve.

20. The fifth and final visit with ACS and BKS took place from March 16, 2011 until March 23, 2011. WS, TS's father, initiated the visit with Mother.

21. Mother and Father met in a neutral place, halfway between their respective residents when Father was picking up or dropping off the children.

22. Father knew where Mother was residing in Milton, Pennsylvania. Father testified, however, that while he cannot recall the specific address of the Milton home, he does know the name of the road where DG lives.

23. At of the end of January, 2012, Mother, children, and EM moved to their current address, 928 West Fourth Street, Apartment 3, Williamsport, Lycoming County, Pennsylvania.

24. Father became aware that Mother and children were in Williamsport, Pennsylvania at the end of 2010. Father testified that he did not know the exact location of Mother and children until he was served with Court documents pertaining to the hearing.

25. Father did not visit with ACS or BKS after March 23, 2010.

26. Father never attempted to arrange a regular visitation schedule with Mother. Father said that due to his employment, he was unable to ask for a specific day or time off from work.

27. Father did not send cards or gifts to the children. Father testified that he did not know where to send the items because he did not have an address. Father did acknowledge that he knew Mother and children were in Williamsport. Father knows the road upon which DG resides.

28. Father called Mother to speak to the children multiple times. An exact number was not given. When Father called, he would speak only to ACS. Father would tell ACS that he would call again in a few days. Father would not call within the next few days.

29. Mother testified that when the phone rang, Austin would ask if it was “daddy.” ACS would then become disappointed when the phone call was not from Father. Mother testified that ACS would be upset when Father did not call.

30. Father’s last phone call to Mother occurred on April 5, 2011. Mother has not received a phone call from Father since that date.

31. In July, 2011, Father and Mother had a conversation via text message. The two argued because Mother told Father he needs to call his children more. During the text message conversation, Father never asked to see the children.

32. On October 12, 2011, Father texted Mother. Father told Mother to wish BKS a happy birthday on his behalf. During the conversation, Father never asked Mother to see the children.

33. Mother did not recall any other text message conversations with Father. Mother has not received a text message from Father since October 12, 2011.

34. Father testified that he tried to call Mother multiple times since April 5, 2011, but the phone would ring without going to a voicemail message. Father lost his phone contacts when he purchased a new phone. Father said that he could have been dialing Mother’s number incorrectly.

35. Mother provided phone records from September, 2011 until April, 2012. There was no record of a phone call from Father to Mother.

36. The phone records could only be retrieved for the preceding six months.

37. There are no phone records for the text message conversations between Mother and Father.

38. Father never tried to contact Mother via social media tools such as Facebook or Myspace. Father deleted his Facebook account. Father did not ask his parents or sisters to contact Mother on his behalf via Facebook.

39. Mother had contact with Father's twin sisters. In May or June, 2011, Father's sisters contacted Mother to arrange a visit. The sisters were unable to meet Mother and children as planned. Sisters contact Mother again in April 2012. After Mother agreed to a visit, Sisters stopped messaging Mother.

40. Father never asked Sisters if they were in contact with Mother.

41. Father never asked his parents to contact Mother.

42. Father never tried to find DG's house so that he could in turn locate his children.

43. Father never tried to call DG to ask where his children were. Father says that he did not want to involve DG because he only wanted to interact with Mother directly.

44. Father had EM's phone number from a previous text message conversation. Father never called EM to speak with Mother. Father testified that he did not want to involve EM because he wanted to interact with Mother directly. Father did not care to speak with EM.

45. Father testified that he eventually lost DG's phone number and EM's phone number because he had to purchase a new phone.

46. Father has provided sporadic support for the children. As of date, Father is at least one month behind on payments. Father's payments are through wage attachment. His delay in support is due to unemployment.

47. While unemployed, Father did not contact Mother to visit with the children during his time off.

48. Father's Federal Income Tax Refund was intercepted and a payment of between \$300 and \$500 was placed on Father's arrears thereby reducing them.

49. Mother has asked Father to terminate his parental rights.

50. Father testified that he wanted to file for custody but did not have the financial resources to do so. Father did not understand that he could file for custody without hiring an attorney.

51. Father admitted that he never called a Courthouse to learn how to file for custody. Father never had a consultation with an Attorney to discuss how he could file for custody. Father never contacted legal services to arrange representation.

52. Father testified that he planned to file for custody within the next few months if the hearing had not been scheduled.

53. Father admitted that he is a stranger to the children.

54. Father did not know the name of the children's physician.

55. Father testified that visiting with the children once a month would be a fine arrangement for him. Father said that in the ideal world, he would see the children three or four times per month, but he would try to do the best he could to be off from work.

56. ACS and BKS are currently unable to recognize Father in photographs. Mother and EM showed the children a picture of Father during the summer of 2011. ACS shrugged his shoulders. BKS did not respond to the picture.

57. When Mother asked who T is, ACS and BKS were unable to respond.

58. Mother and EM started dating in September, 2010. The two were engaged in February, 2011. EM has been involved with the children since September, 2010, and has taken on the full responsibility of the children financially and emotionally.

59. EM has been educating the children, taking care of their daily needs, and providing them with food and shelter.

60. Mother and EM have a loving relationship.

61. Both children refer to EM as “daddy.”

62. Both children have an emotional bond with EM.

### **Discussion**

Mother asserts that the grounds for termination of the Father’s parental rights may be found in 23 Pa.C.S. §2511(a)(1), which reads:

#### §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 evidence 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 §2511(a)(1) where a parent demonstrates a settled purpose of relinquishing parent claim to a child **or** fails to perform parental duties for at least six months prior to filing for the termination petition. In the Interest of C.S., 761 A.2d 1197, 1201 (Pa. Super. Ct. 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. Ct. 2004), appeal denied, 872 A.2d 1200 (2005) citing In Re: D.J.S., 737 A.2d 283, 286 (Pa. Super. Ct. 1999).

In order to determine 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 characterizes 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 that Father has failed to perform his parental duties for a period of time in excess of six (6) months and has evidence of settle purpose of relinquishing his parental claim, as of the date of the Petition to Involuntarily Terminate Father's Parental Rights. Father's counsel argued that Father's attempted efforts to communicate with Mother from March, 2010 until present are sufficient to overcome the allegation that Father failed to perform his parental duties for a period time in excess of six months. The Court does not agree. When a parent has failed to utilize all available resources to preserve the parental relationship, the Court may terminate parental rights. Id.

Through his own admission, Father admits that he has not seen his children since March 23, 2010. Father has not spoken to his children on the phone since April 5, 2011. Father's reason for not sending birthday cards or gifts was due to the fact that he did not know where to send them. Father admits, however, that he knew the road where DG, the children's grandmother, lived. Father never drove to the road in an attempt to find DG's house to drop off gifts for the children. Since March 23, 2010, Father has not asked Mother to see the children. Father made no attempt to take any actions to obtain Court intervention despite knowing that this remedy was available to him. Father said that he did not file for custody due to financial constraints. Father never even attempted to call the local Courthouse to inquire into the necessary steps to file for custody.

Merely attempting to call Mother sporadically over the past two years was certainly not Father's only available resource. If Mother was not responding to Father's calls or text messages, Father could have called EM. Father could have asked his parents to contact Mother via social networking sites. Father could have asked his Sisters if they

knew how to contact Mother. Furthermore, Father could have driven to DG's house to attempt to discover the location of the children.

Father has paid child support through wage attachment. At times, his payments were sporadic. Presently, Father is unemployed. Payments of child support, without more, do not constitute performance of parental duties. A period of financial hardship cannot excuse a parent's failure to make and maintain reasonable communication and association with his or her children. Adoption of B.L.W. and W.T.W., 26 Pa. D & C. 3d 219, 228 (1983). Father's child support payments cannot excuse his lack of communication with his children.

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., 761 A.2d 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. Ct. 2008)(citing In Re: I.A.C., 897 A.2d 1200, 1208-09 (Pa. Super. Ct. 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. Ct. 1996), appeal denied, 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. Ct. 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., 761 A.2d at 1202.

In the present case, Father does not have a bond with the children. Father himself admitted that he is currently a stranger to both children. The only Father that BKS knows is EM, Mother’s fiancé. When Mother and EM showed the children a photograph of Father, BKS did not react and ACS shrugged his shoulders. ACS has stopped wondering if Father was calling when Mother’s phone rings.

The last time Father saw the children was March 23, 2011. ACS was less than three years old at the time, while BKS was less than one year old. Mother filed a Petition to Involuntarily Terminate Father’s Rights approximately one year after Father’s last physical contact with the children. The Court is certain the BKS would not be able to recollect who Father is since he was less than one year during their last visit. The Court is doubtful that ACS has a strong recollection of Father. It is clear that Father has no bond with the children. Further, termination of his rights would not destroy an existing

necessary and beneficial relationship as such relationship currently does not exist between Father and the children.

**Conclusions of Law**

1. The Court finds that DS, Mother, has established by clear and convincing evidence that TS's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. § 2511(a)(1).

2. The Court finds that DS has established by clear and convincing evidence that the developmental, physical, and emotional needs and welfare of ACS and BKS will best be served by termination of TS'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. 6309**  
:  
**ADOPTION OF** :  
**ACS and** :  
**BKS,** :  
                  **Minor children** :

**DECREE**

AND NOW, this 28<sup>th</sup> day of June, 2012, after a hearing on the Petition for Involuntary Termination of the Parental Rights of TS, held on June 27, 2012, it is hereby ORDERED and DECREED:

- (1) That the parental rights of TS 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 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  
Adoption Medical History Registry  
Hillcrest, Second Floor  
P.O. Box 2675  
Harrisburg, PA 17105-2675  
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

By the Court,

Joy Reynolds McCoy, Judge