

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

IN RE :
MW, JR., : **NO. 6340**
A MINOR CHILD :

DATE: November 30, 2012

OPINION AND ORDER

Before this Court is Lycoming County Children & Youth Services' (hereinafter "the Agency") Petition for Involuntary Termination of Parental Rights of Mother, NM, and Father, MW, Sr. It is alleged that Mother and Father have not fulfilled their parental obligations with regard to the child, and that it is in the child's best interest that the Court terminate their parental rights. On November 8, 2012, Mother voluntarily relinquished her rights to the child to the Agency. A hearing on the Petition to Involuntarily Terminate the Father's Parental Rights was held on November 8, 2012, and November 9, 2012. At the time of the hearing, the Agency was represented by Charles Greevy, Esquire, Father was represented by Joel McDermott, Esquire, and John Pietrovito, Esquire, was the appointed Guardian Ad Litem for the minor child.

FINDINGS OF FACT

1. MW, Jr., is 12 years old having been born on November 25, 1999. He is of the African-American race.
2. NM is the biological mother of MW, Jr. She is 38 years old having been born on July 19, 1974, and is of the African-American race. Her last known address is 712 Second Avenue, Williamsport, Pennsylvania 17701.

3. MW, Sr., is the biological father of MW, Jr. He is 39 years old having been born on July 25, 1973, and is of the African-American race. He is currently incarcerated at Federal Correctional Institution-Berlin located in Berlin, New Hampshire.

4. Mother and Father were never married.

5. On November 8, 2012, at the commencement of the hearing to involuntarily terminate both parents' parental rights, Mother voluntarily relinquished her parental rights of the minor child to the Agency.

6. Father has been incarcerated since May 12, 1999, which was prior to the birth of MW, Jr.

7. Father has had good behavior throughout his period of incarceration and is currently in a Federal Camp which is the lowest security offered by the Federal Bureau of Prisons. Father anticipates being released one year prior to his release date if he successfully completes a drug program that he recently has been accepted into. He would be released at that time for six months to a half-way house.

8. Father anticipates his release to occur in mid-2016 stating that prior to release, he would commence a nine to twelve-month drug program and thereafter would be released to a half-way house for approximately six months.

9. If Father is released when he anticipates, the minor child will be almost 17 years old at the time of Father's release.

10. Father has testified that he has exhausted all remedies for being considered for release at an earlier date due to the extenuating circumstances of his son.

11. Father has only seen his son on one occasion when he was approximately 1-2 months of age. At that time, the maternal grandmother brought the child to the Lycoming County Prison to visit Father. This visit occurred through a glass barrier.

12. Father testified that he knew the situation with MW, Jr.'s mother, NM, was not good, but was aware that MW, Jr. was living with the maternal grandmother and he was satisfied with the care that she was providing to MW, Jr.

13. Father testified that he had phone contact with the maternal grandmother and, on occasion, was able to speak to MW, Jr.

14. Father was aware that the maternal grandmother died in 2011.

15. Father had no contact with Mother after the grandmother's death.

16. Father indicated that he did try to call a few people to find out the status of the minor child.

17. For the entirety of the child's life, Father has never sent any money, gifts, or pictures to the minor child. Father did send one letter with a photo, after the Court encouraged him to do so, to the child's caseworker. This letter was sent after the Agency filed its Petition to Terminate Parental Rights.

18. On March 21, 2012, the Lycoming County Children & Youth Services Agency became aware that the child's mother was not home to pick the son up from the school bus.

19. MW, Jr., is an autistic child who is unable to communicate verbally and is intellectually disabled.

20. The school district made numerous attempts to contact Mother before contacting the Agency.

21. On the afternoon of March 21, 2012, the Agency assumed emergency custody of the minor child as Mother could not be located.

22. On March 27, 2012, MW, Jr., was found to be a dependent child.

23. Father has participated in all of the hearing regarding the child either by phone or through his counsel.

24. MW, Jr., is currently in the resource home of MS.

25. MW, Jr., is diagnosed with lower-end spectrum autism.

26. MW, Jr.'s autistic support teacher, BA, indicated that this is her second year working with MW, Jr. MW, Jr. is non-verbal and has significant needs with communication. MW, Jr. communicates through sign language and use of a dinobox.

27. BA testified that once MW, Jr. was removed from his Mother's care and placed in a resource home, that there were immediate changes in his hygiene and over time, he became more willing to complete hygiene tasks on his own.

28. MW, Jr. has had significantly less absences since his placement and has made academic gains.

29. BA testified that she has significant contact with the resource mother and that it is apparent that there is reinforcement in her home while working on things with MW, Jr.

30. BA attributes MW, Jr.'s progress and academic gains to the work that he receives in his resource home.

31. The resource mother, MS, testified that MW, Jr. has made significant progression since being in her care. MW, Jr.'s hygiene has significantly improved, as well as his behavior.

32. Upon MW, Jr. being placed with her, MS attended a week-long conference on autism which she believes was very beneficial to her and her care of MW, Jr.

33. Father has had only a small amount of contact with the Agency since MW, Jr., was placed with the Agency in March, 2012.

34. Throughout the proceedings in this matter, there has been reference made by Father through his counsel that he would provide the Agency with the names of kinship and resources for the child.

35. The Agency has made a thorough effort to locate a kinship placement for MW, Jr. and was not successful in doing so.

36. It was not until approximately the time of the pre-trial held in this matter concerning the Petition to Involuntarily Terminate Father's rights which occurred on October 10, 2012, that Father provided the Agency with the name of RF as a potential resource for the child.

37. RF is the mother of Father's older child and lives in the Philadelphia area.

38. RF testified that she is willing to be a resource for MW, Jr.

39. RF advised the Court that she has never met MW, Jr. RF testified that approximately two months ago, when speaking with Father concerning the minor child, she offered to Father to care for MW, Jr.

40. RF advised the Court that Father has maintained consistent contact with her with by phone and that she receives email contact all of the time from Father and that Father has maintained a relationship with his daughter.

41. Father has sent money to his daughter on several occasions.

42. The minor child is most closely bonded with his resource mother, MS.

43. Bruce Anderson, Licensed Psychologist, advised the Court that the minor child is very relaxed with the resource mother and is bonded very strongly to her.

44. Mr. Anderson indicated that MW, Jr. was primarily raised by his grandmother until her death and that there is no attachment between Father and the minor child as Father has been absent throughout the child's life.

45. Mr. Anderson indicated that there would be no harm to the minor child emotionally or psychologically by the Court terminating Father's parental rights.

DISCUSSION

The Court is vested with the power to terminate parental rights. 23 Pa.C.S.A. § 2511(a) provides that the rights of a parent in regards to a child may be terminated by any of the following:

(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.

(2) 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(b) provides:

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.

In order to involuntarily terminate parental rights, the party seeking termination must prove by clear and convincing evidence the grounds for termination. *Santosky v. Kramer*, 455 U.S. 745 (1982); *In re Adoption of J.D.P.*, 471 A.2d 894, 895, (Pa. Super. Ct. 1984).

According to the Pennsylvania Supreme Court:

[o]nce the evidence establishes a failure to perform parental duties or a settled purpose of relinquishing parental rights, the court must engage in three lines of inquiry: (1) the parent's explanation for his or her conduct; (2) the post-abandonment contact between parent and child; and (3) consideration of the effect of termination of parental rights on the child pursuant to Section 2511(b).

In re Adoption of Charles E.D.M., 708 A.2d 88, 92 (Pa. 1998). In an involuntary termination proceeding, the focus is on the conduct of the parents. *In re B.L.W.*, 843 A.2d 380, 383 (Pa. Super. Ct. 2004). Most importantly, “however, is that adequate consideration be given to the needs and welfare of the child.” *In re I.A.C.*, 897 A.2d 1200, 1204 (Pa. Super. Ct. 2006) (citing *In re J.I.R.*, 808 A.2d 934, 937 (Pa. Super. Ct. 2002), appeal denied, 821 A.2d 587 (2003). “In evaluating the needs and welfare of the child, the trial court must consider ‘whatever bonds may exist between the children and the [parent], as well as the emotional effect that termination will have upon the

children.”” *In re I.A.C.*, 897 A.2d 1200, 1204 (Pa. Super. Ct. 2006) (quoting *In re Adoption of A.C.H.*, 803 A.2d 224, 229 (Pa. Super. Ct. 2002)). The Pennsylvania

Superior Court has determined that

The bonding cannot be in one direction only -- that of child to the parent - but must exhibit a bilateral relationship which emanates from the parents' willingness to learn appropriate parenting . . . [and] drug rehabilitation It is inconceivable that a child's bonding to the parent, if it can be documented, will supervene failure to thrive, . . . neglect, domestic violence reports and removal of the children into foster care due to adjudications of dependency and termination findings

In re Involuntary Termination of C.W.S.M., 839 A.2d 410, 419 (Pa. Super. Ct. 2003).

Finally, “[t]he justification behind termination of parental rights is to prevent children from growing up in an indefinite state of limbo, without parents capable of caring for them, and at the same time unavailable for adoption by loving and willing foster families. . . .” *In re C.T.*, 944 A.2d 779, 782 (Pa. Super. Ct. 2008) (quoting *In re H.S.W.C.-B.*, 836 A.2d 908, 910-11 (Pa. 2003)).

The Agency seeks to the termination of Father’s parental rights pursuant to 23 Pa. C.S. § 2511 (a)(1) and (2).

When arguing that Father’s parental rights should be terminated the Agency points to the facts that Father has been incarcerated for the entirety of the child’s life and has had little to no contact with the boy other than seeing the boy through glass when the child was still an infant therefore no child/parent bond exists. The agency further asserts that Father has sent no gifts, correspondence, or financial support to the child while he has been in the care of the agency¹.

¹ It is noted that after a hearing in which the Court urged Father to have contact with his son, Father did in fact send a letter. However, the letter came after the Agency had filed the Petition for Termination of Parental Rights.

With regard to the role incarceration of a parent plays in an involuntary termination of parental rights case the Pennsylvania Supreme Court recently held:

. . . . incarceration, while not a litmus test for termination, can be determinative of the question of whether a parent is incapable of providing essential parental care, control or subsistence and the length of the remaining confinement can be considered as highly relevant to whether the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent, sufficient to provide grounds for termination pursuant to 23 Pa.C.S. § 2511(a)(2).

In re: Adoption of S.P., 47 A.3d 817, 830 (Pa. 2012). The Court went on to state that incarceration alone is not conclusive on the issue of abandonment; the inquiry should be whether the parent utilized the resources available in order to establish or continue a close relationship with the child. *Id.* at 828.

In the present case evidence was presented that highlighted the fact that Father does know how to parent even though he is incarcerated and he has in fact been cultivating and maintaining a close relationship with his daughter. He has even sent her some money at times. What Father has failed to do is cultivate and maintain a relationship with the child who is the center of this termination petition. When asked why he had not sent his son any form of support Father replied that he had no money to send as his prison wages range from \$17 - \$30 a month. Father further explained that he had failed to send the child letters because he did not think the boy would understand them. Father failed to send anything, even a drawing.

This case is analogous with *In re: Adoption of S.P.*; Father had been incarcerated for the entirety of his child's life; Father both failed to establish and maintain a relationship with the child who had special needs or support the child by sending prison wages. 47 A.3d 817, 820 (Pa. 2012). The trial court held that due to the fact that Father

did not have housing, employment or transportation he did not have the ability to be a caregiver for the child. *Id.* The court also noted that Father's incapacity to provide care for the child was not soon to be remedied as Father still had a lengthy sentence to complete. *Id.* Ultimately, after the case was appealed to the Supreme Court of Pennsylvania the decision of the trial court was reinstated and Father's parental rights were terminated under 23 Pa.C.S.A. § 2511(a) (2).

Father has failed to utilize any of the means available to him to establish, maintain and then nurture a relationship with his son.

A parent's absence and/or failure to support due to incarceration is not conclusive on the issue of abandonment. . . . [W]e must inquire whether the parent has utilized those resources at his or her command while in prison in continuing a close relationship with the child. Where the parent does not exercise reasonable firmness in declining to yield to obstacles, his other rights may be forfeited.

Id. at 829. This Court finds through clear and convincing evidence that Father's Parental Rights to MW, Jr. should be terminated pursuant to 23 Pa.C.S.A. § 2511(a) (2).

The Court also finds that the Agency has met their burden of proof by presenting clear and convincing evidence that Father evidenced a settled purpose of relinquishing his parental rights and has refused to perform parental duties for a period of at least six months immediately preceding the filing of the petition as pursuant to 23 Pa. C.S. § 2511 (a) (1). The Court acknowledges that Father's incarceration presents a hurdle when it comes to actively parenting. However, Father had no contact with his son from sometime in 2011 when the maternal grandmother passed away until after the Petition to Involuntarily Terminate Parental Rights was filed. There was also evidence presented that Father was able to establish and maintain contact with his daughter while incarcerated. Father's reasoning for not maintaining contact with his son was that Mother

was hard to get in contact with and that he failed to send letters because he did not think that the boy would understand the letters. The Court points out that after the child had been found to be dependent Father knew how to establish contact with his son but again he failed to do so. The Court finds through clear and convincing evidence that there is a basis to terminate Father's parental rights pursuant to 23 Pa. C.S. § 2511 (a) (1).

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 1197, 1202 (Pa. Super. 2000). 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., at 1202 (citations omitted).

In the present case, Father does not have a bond with the child. The last time Father saw the child or had any contact with the child prior to the Agency filing its Petition was in late 1999, early 2000 when the child was approximately one to two months old. This visit occurred through a glass barrier at the Lycoming County Prison. There was no testimony from any party that there was a significant bond demonstrated between Father and the child. Based upon MW, Jr.'s special needs, it is doubtful to this Court that he has any recollection or knowledge of who MW, Sr., is. 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 as there currently exists no relationship between Father and the child.

CONCLUSIONS OF LAW

1. The Court finds that the Agency has established by clear and convincing evidence that MW, Sr.'s parent rights should be involuntarily terminated pursuant to 23 Pa.C.S.A. 2511 (a) (1) and (2).

2. The Court finds that the Agency has established by clear and convincing evidence that the developmental, physical, and emotional needs and welfare of MW, Jr., will be best served by termination of MW, Sr.'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 :
MW, JR., : **NO. 6340**
A MINOR CHILD :

DECREE

AND NOW, this 30th day of November 2012, after a hearing on the Petition for Involuntary Termination of the Parental Rights of MW, Sr. held on November 8 and 9, 2012, it is hereby ORDERED and DECREED:

- (1) That the parental rights of MW, Sr. be and hereby are terminated as to the child above-named.

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