

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

**IN RE** : **NO. 6288**  
**D.N.** : **ORPHANS' COURT DIVISION**  
: **Opinion & Order**  
: **Petition for Involuntary Termination**  
: **of Parental Rights**

**OPINION & ORDER**

On October 11, 2011, J.N., natural mother of D.N., filed a Petition for Involuntary Termination of the Parental Rights of the minor child's natural father, M.G. Mother alleges that Father, by conduct continuing for a period of at least six (6) months immediately prior to the filing of the Petition, has evidenced a settled purpose of relinquishing his parental claim to the minor child and/or has refused or failed to perform his parental duties. 23 Pa. C.S.A. § 2511 (a) (1). A hearing was held on July 2, 2012. Father was present along with his attorney, Kirsten Gardner. Mother was present along with her attorney, David Irwin. Matthew Golden was present as the court-appointed guardian ad litem for the minor child.

The parties stipulated that the minor child was born on August 2, 2009 and that his natural mother is J.N. and his natural father is M.G.

In a proceeding to involuntarily terminate parental rights, the burden of proof is on the party seeking termination to establish by clear and convincing evidence the "existence of grounds for doing so." In Re: Julissa O. 746 A.2d 1137, 1139 (Pa. Super. 2000). "The standard of clear and convincing evidence is defined as testimony that is so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitation of the truth of the precise facts and issues." Id., quoting, Adoption of Atencio, 539 Pa.161, 650 A.2d 1064, 1066 (1994).

The Court's first inquiry is focused on the conduct of the parent. More specifically, in order to terminate the parent's rights, the Court must be satisfied by clear and convincing evidence that his conduct meets the grounds for termination as delineated by the statute. In Re: Z.P., 994 A.2d 1108 (Pa.Super. 2010).

The Court may terminate parental rights under § 2511 (a) (1) where the parent demonstrates a settled purpose to relinquish parental claims to a child or fails to perform parental duties for at least the six (6) months prior to the filing of the Termination Petition. Id., citing In Re: C.S., 761 A.2d 1197 (Pa. Super. 2000) (en banc.).

As our courts have noted, there is no simple definition of parental duties. It is best understood in relation to the needs of a child which include love, protection, guidance and support. Our courts have held that this "parental obligation is a positive duty which requires affirmative performance." In Re:Z.P., 994 A.2d at 1119, quoting In Re: B., N. M., 856 A.2d 847, 855 (Pa. Super. 2004), appeal denied, 582 Pa. 718, 872 A.2d 1200 (2005). Furthermore, the courts are instructed not to "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 an involuntary termination." In Re: B., N. M., 856 A.2d at 855.

Much of the evidence presented in this case is undisputed. The parties previously resided together but separated in November of 2008. Mother moved to Pennsylvania while father remained in Maryland.

In December of 2008, Mother found out that she was pregnant.

On February 18, 2009, a final Protection from Abuse Order was entered against Father in favor of Mother in the Court of Common Pleas of Lycoming County at No. 09-20, 165. The child was born in August of 2009 while the PFA was still in effect.

Prior to the child's birth, Mother never contacted Father to advise him that they had conceived a child together.

Mother claims that Father found out about her child in April of 2010. Mother was living with her mother at the time and was working at a local restaurant called Rivals. Father called and left a message with a co-worker to tell Mother that her "baby father" had called. Mother further contends that in June or July of 2010, she received a text message from Father indicating that he was "coming up" to see the child. Mother responded that if Father did show, Mother would call the police.

Father claims that he did not find out about the existence of his child until July 2010 when he received a call at work that he had a child with Mother. He characterized the source of the information as "unreliable." As a result, he explained that he was not sure if the information was correct.

On July 29, 2010, Father filed a Complaint to establish paternity seeking genetic testing. A hearing was scheduled for September 20, 2010 but Father failed to appear and the complaint was dismissed.

Father explained that he did not appear for the hearing at several reasons. First, he was afraid of getting arrested. Second, if he was arrested, it would place his job in jeopardy and affect his ability to support and care for his two minor children. Lastly, he had "serious" doubts about whether he was the father.

Following Father becoming aware that he may be the natural father, there were contacts primarily by texts from Father to Mother. Mother described the contacts as “scattered” while Father described the contacts as “numerous.”

Father explained that in the texts, he inquired about his child, offered financial help and was hoping that Mother would “come around” to admitting that he was the father and permitting him contact. On March 11, 2011 and March 12, 2011, Father left voicemails on Mother’s phone regarding the child. On the first date, he stated: “It’s not like you left with my DVD’s. You left with my kid.” On the second date, he left a message stating as follows: “So, do we have to go to court or can we try to resolve this?”

On September 20, 2011, in violation of the PFA Order, Father left numerous text and voice messages on Mother’s phone. The messages were both threatening and harassing. Some of the messages referenced the parties’ child. On September 20, 2011, Father left a voice message that mentioned, among other things, that he was “coming up there to get my kid.” He also stated: “You wanna put your boy in danger. Go ahead swear to God you love him that much. You put him in danger that much.” The message further stated “I am coming up there and I am going to get my rights to my kid.” One of the text messages referenced that “all” Father wanted to do was “see my son.”

Shortly thereafter, Mother filed the Petition to Terminate Father’s parental rights.

Father conceded that he has never met his child, never spoken with him, never provided any gifts, cards or letters, never provided any financial support whatsoever, failed to pursue his paternity claim and failed to pursue any legal action whatsoever to establish custody or to obtain visitation rights. While he conceded he knew how to contact Mother and where she lived, he argued that Mother prevented him from performing his parental duties. Among other

things, he argued that Mother maintained the PFA against him, threatened him with being arrested if he came to the Williamsport area, moved, changed her telephone number, failed to accommodate any of his requests for contact, failed to arrange for contact with third parties, and never confirmed until more recently that he was, in fact, the biological father of their minor child. In fact, Father claims that he never became entirely aware that he was the father until he read such in the September 23, 2011 Affidavit of Probable Cause relating to the PFA violation and subsequent terroristic threats criminal charges filed against him.

Father conceded that he talked to lawyers about pursuing legal action but the cost was too much. He also conceded that with respect to his other two children, he obtained a Custody Order and actually arranged custody exchanges through a mutual third party.

Father continued to express a desire to establish a relationship with his son and exhibited, through his words, a continuing interest in the child and a genuine effort to associate with the child. However, he failed to act affirmatively with good faith, interest and effort in order to maintain the parent/child relationship to the best of his ability. He failed to utilize available resources to establish a parental relationship and failed to exercise reasonable firmness in resisting obstacles placed in the path of maintaining the parent/child relationship. "Parental rights are not preserved by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with the child's physical and emotional needs." In Re: B., N. M., 856 A.2d at 855.

Yes, a PFA was in existence and if the Defendant violated that PFA, he would be subjected to potential incarceration and fines. The PFA, however, only precluded contact with Mother. It did not preclude contact with the minor child. Father could have sent cards, letters, or gifts. Father chose not to do so.

Father was well aware that he could proceed in court to establish custody rights. He was involved in a previous custody action with respect to this other two children, filed a pro se petition to establish paternity and even threatened court action. Not only did Father fail to initiate such action but he also acted in such a manner that the paternity petition was dismissed. Candidly, his excuse that he thought he would be arrested and place his other children in jeopardy fails to persuade the Court of its merit. Other than continuing to harass, berate and threaten the natural mother under the guise of hoping she would come around and permit custody, Father did nothing. The obstacles that he faced were minimal. He knew where Mother lived, knew where Mother worked, knew where the grandmother lived, had Mother's telephone number, had access to the Lycoming County Courts, was familiar with the process, was readily employed and had funds, and was relatively sure if not certain that he was the father.

His child needed a father's love, protection, guidance and support. These physical and emotional needs were not met by Father's vocal interest. Father even failed to be a financial benefactor. He never sent one cent for his child's support. He took zero affirmative action to take and maintain a place of importance in his child's life.

Accordingly, the Court finds by clear and convincing evidence that Mother has established that Father failed to perform his parental duties for at least the six (6) months prior to the filing of the Termination Petition.

Because the statutory requirement for involuntary termination of Father's parental rights has been established under subsection (a), the Court must next consider whether the child's needs and welfare will be met by termination pursuant to 23 Pa. C.S. § 2511 (b).

“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.” 23 Pa. C.S. § 2511 (b).

The Court must take into account what is best known as a bonding analysis. More specifically, the Court must consider whether a bond exists between the child and the parent and whether termination of the parent’s rights would destroy an existing, necessary and beneficial relationship. In Re Z.P., 994 A.2d at 1121, citing In re C.S., 761 A.2d at 1202.

The minor child is close to three (3) years old. Father has not had any contact whatsoever with the minor child. Clearly, there is no bond whatsoever and Father concedes this. The minor child considers his stepfather to be his father. They have a loving, parent/child relationship. The stepfather is providing love, comfort, security and stability to the child. The termination of Father’s parental rights would not destroy any existing, necessary or beneficial relationship. In fact, failure to terminate Father’s rights would be detrimental to the child.

“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). The child needs a father that can now and in the future provide stability, comfort, shelter, food, clothing and love.

Mother has shown by clear and convincing evidence that the parental rights of Father should be involuntarily terminated. The requirements of the statute have been met and it is in the best interest and welfare of the child that Father’s parental rights be terminated.

**ORDER**

**AND NOW**, this \_\_\_ day of July 2012, for the reasons set forth in the foregoing Opinion, the parental rights of M.G. to his son, D. N., are hereby involuntarily terminated.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: David Irwin, Esquire  
Kirsten Gardner, Esquire (APD)  
Matthew Golden, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)