

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

**IN RE:** : **NO. 6337**  
:   
**AH and** :   
**EH,** :   
:   
**minor children,** :

**OPINION AND ORDER**

**AND NOW**, this 5<sup>th</sup> day of **February, 2013**, after a second scheduled hearing on February 4, 2013, regarding the Petition to Involuntarily Terminate the Parental Rights of Natural Father, KH. The Court notes that the first hearing to terminate Father's parental rights was held on January 2, 2013. At the time of the first hearing, counsel for Petitioners provided the Court with verification from the United States Post Office that KH had received a certified mailing from Petitioner's counsel on December 11, 2012. At the time of the first hearing, the Court did not review the contents of the mailing, but determined that Natural Father had received notice of the hearing based upon the notification from the Post Office of receipt of correspondence. The Court therefore proceeded to conduct the hearing on the termination of Father's parental rights in Father's absence. On January 3, 2013, Father appeared at the Court indicating that he was present for the hearing on the Petition to Involuntarily Terminate his parental rights. At that time, Father produced the notice he received from Petitioner's counsel which incorrectly listed the hearing date as January 3, 2013, at 3:00 p.m. In light of the fact that the Natural Father was provided with a notice which stated the wrong date of the hearing and did appear on the date that was provided to him, the Court felt it necessary that the

hearing on the Petition to Involuntarily Terminate Father's Parental Rights be rescheduled to allow him the opportunity to defend the Petition. At the time he appeared before the Court, Father indicated to the Court that he was contesting the termination of his parental rights. The Court thereafter scheduled a hearing on the termination of Father's parental rights for February 4, 2013, and a conference for January 28, 2013. Additionally, the Court appointed counsel on behalf of Father and provided Father with the name and telephone number for the Guardian Ad Litem. The Court urged Father to promptly contact both the Guardian Ad Litem and the counsel who had been appointed on his behalf.

Both Father and his counsel failed to appear at the Pre-Trial Conference scheduled for January 28, 2013. At the time of the scheduled hearing on the termination of Father's parental rights, Father's counsel appeared, but Father failed to appear. Father's counsel indicated that she had spoken with Father on two occasions, the most recent being January 29, 2013. During that conversation, she reminded him of the scheduled date of the hearing on the involuntary termination of his parental rights. The Guardian Ad Litem, Angela Lovecchio, Esquire, also had contact with Father. Attorney Lovecchio went to Father's home on January 24, 2013, to discuss this matter with him. At that time, Father acknowledged that he had received correspondence from Attorney Lovecchio which outlined the date and time for the hearing scheduled on the termination of Father's parental rights.

Before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, AK, in regard to the rights of her children, AH and EH, on September 6,

2012. Mother seeks to terminate the parental rights of the children's biological Father, KH, as a prerequisite to having the children adopted by her Husband, RK. A hearing was held on the Petition on January 2, 2013. Due to the mix-up with notification to the Father, a second hearing was scheduled to be heard on February 4, 2013, so that Father could defend the Petition. At the time of the scheduled hearing on February 4, 2013, the Petitioners, AK and RK, appeared with their counsel, Joel McDermott, Esquire, the Guardian Ad Litem, Angela Lovecchio, Esquire, appeared on behalf of the children, and Katie Bellfy, Esquire, counsel for Father appeared on behalf of Father. Father, KH, though he was properly served with a copy of the Petition for Involuntary Termination of his parental rights and notice of the hearing date and time, failed to appear. In light of Father's failure to appear at the second hearing on February 4, 2013, the Court has relied upon the testimony presented by the Petitioners on the original hearing date, January 2, 2013.

**Finding of Facts**

1. AH was born on November 12, 1998, in Danville, Montour County, Pennsylvania.
2. EH was born on May 31, 2000, in Williamsport, Lycoming County, Pennsylvania.
3. The children's mother is AK who was born on April 16, 1979.
4. The children's natural father is KH who was born on June 26, 1975.
5. The children currently reside with Mother and their step-father, RK, at 198 Fairfield Center Road, Montoursville, Lycoming County, Pennsylvania.
6. The natural father, KH, resides at 14507 Highway 414, Slate Run, Pennsylvania.

7. Mother and Father separated in June of 2003 when the children were five and three years of age. They divorced in 2004. The last time that the natural father had contact with the children was approximately four to five years ago. Prior to that, there had been a three-year gap in time without the Father having contact with the children. Since 2003, Father has never called the children or sent any mail or gifts to the children.

8. Natural Father has paid minimal support for the children and currently is in excess of \$7,000.00 in arrears.

9. Mother has resided in the same area since her separation from Father.

10. Father knows where Mother's mother (maternal grandmother) currently resides.

11. Mother has done nothing to block Father from contacting the children.

12. Mother and RK were married on July 7, 2012.

13. RK has known the children for approximately two years.

14. Both children are very close to RK and have a very loving relationship with him.

15. There is no bond between the children and natural Father.

16. The natural Father, KH, is not a member of the armed forces.

### **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 that as of the date of the Petition to Involuntary Terminate his parental rights, the Father has failed to perform his parental duties for a period of time in excess of six (6) months and has evidence of settled purpose of relinquishing his parental claim. Father has had absolutely no contact with the minor children in four to five years. Prior to that, there was approximately a three year gap when Father had no contact with the children. AH is currently 14 years of age and his Father has been absent in his life for at least eight years. EH is only 12 years of age and Father has been absent for at least eight years of her life. Father has made no attempt to see his children during the past four or five years, nor did he take any actions to obtain Court intervention in regard to establishing a relationship with his children. Additionally, Father has failed to even bother to appear at this hearing to in any way defend the termination of his parental rights which clearly evidences his settled purpose to relinquish his parental rights.

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 does not have a bond with the children. The children do not know Father. It is clear that Father has no bond with the children and termination of his rights would not destroy any existing necessary and beneficial relationship as there currently exists no relationship between Father and the children.

**Conclusions of Law**

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

2. The Court finds that AK has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of AH and EH will best be served by termination of KH'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. 6337**  
:   
**AH and** :   
**EH,** :   
:   
**minor children,** :

**DECREE**

**AND NOW**, this 3<sup>rd</sup> day of **January, 2013**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of KH, held on January 2, 2013, it is hereby **ORDERED** and **DECREED**:

- (1) That the parental rights of KH be, and hereby are, terminated as to the children above-named;
- (2) That the welfare of the children 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