

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

**IN RE:** : **NO. 6350**  
 :  
**ADOPTION OF** :  
**MLD,** :  
 :  
**Minor child** :

**OPINION AND ORDER**

**AND NOW**, this 31<sup>st</sup> day of **May, 2013**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, JLF in regards to the rights of her child, MLD on November 2, 2012. Mother seeks to terminate the parental rights of the child's biological father, MSD, as a prerequisite to having the child adopted by her husband, MJF. A hearing on the Petition was held on May 21, 2013. At the time of the hearing, Mother was present with her counsel, Jeffrey Yates, Esquire and Father was present with his counsel, Jenna Neidig, Esquire. The Guardian Ad Litem, Angela Lovecchio, Esquire, was present on behalf of the child.

**Finding of Facts**

1. MLD was born on May 8, 1997. She is a sixteen year old high school sophomore. She currently resides with her mother and her step-father MJF at 1799 Log Run Road, Williamsport, Lycoming County, Pennsylvania.
2. MJF moved in with Mother and daughter in approximately June of 2006. Mother married MJF on November 26, 2007.

3. Mother has always maintained primary physical custody of the child.
4. The child's father is MSD. Father resides at 117 Wilmington Avenue, Middletown, Delaware.
5. Mother and Father met in high school. Mother and Father were no longer a couple when their daughter was born on May 8, 1997 however Father was present at the hospital for the birth.
6. After the birth of her daughter, Mother and the child resided with Mother's parents.
7. In the beginning Father had consistent contact with his daughter and assisted in feeding, changing diapers and holding the child.
8. Mother obtained her own apartment when her daughter was approximately six (6) months old. At that time Father was in college and contact was when it was convenient for both parties.
9. Father maintained sporadic contact with his daughter. Father joined the Marine Corp in 2001 and was stationed in Quantico, Virginia. Father completed his enlistment in 2004. Prior to 2005 Father saw his daughter on a monthly basis.
10. Father admittedly has a history of moving frequently for employment.
11. Father returned to the Williamsport area briefly in 2005 for approximately three months and then he returned in 2006. At this time Father was working third shift at the post office and had difficulty arranging time with his daughter. She would be busy and Father would not want to upset her. Additionally because of his third shift schedule Father relied on his Wife to arrange visits with Mother.

12. From 2007 to the present Father has continued to move around for employment opportunities. His last relocation was in February 2013 when he moved from Williamsport, Pennsylvania to Middletown, Delaware.

13. Father has tried to keep in contact with his daughter through text messages although the contact has not been consistent.

14. Father has maintained contact with Mother regarding his daughter by calling her at work.

15. Father pays child support and has historically been current with payments. Father was found in Contempt for failure to pay on one occasion.

16. Father saw his daughter in April of 2012 at a grocery store and tried to arrange a visit but was unsuccessful. Again in September of 2012 Father and daughter had a chance encounter at a football game in which Father tried to arrange a visit and again was unsuccessful.

17. Father has maintained that he wants visits with his daughter. During a conversation with Mother on October 23, 2012 Father text messaged that he wanted visits with his daughter. At that point Mother asked Father to voluntarily relinquish his parental rights. Father declined. On November 2, 2013 Mother filed this instant petition to involuntarily terminate Father's paternal rights.

### **Discussion**

In order for the Court to find the statutory grounds for involuntary termination of parental rights the petitioner must prove through clear and convincing evidence that the grounds exist. *In re: Adoption of Charles Ostrowski*, 324 Pa. Super, 471 A.2d 541, 542

(Pa. Super. 1984). “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 in issue.’” *In re A.S.*, 11 A.3d 473, 477 (Pa. Super. Ct. 2010) (quoting *In re J.L.C. & J.R.C.*, 837 A.2d 1247, 1251 (Pa. Super. Ct. 2003).

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 . . . .<sup>1</sup>

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 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

---

<sup>1</sup> The statute in entirety continues to state “or has refused or failed to perform parental duties” however in her petition Mother only pled that Father has evidenced a settled purpose of relinquishing his parental claim. During argument counsel for Mother attempted to argue the parental duties portion of the statute at which time counsel for Father stated that Mother had not pled that in her petition; counsel for Mother withdrew that argument. Therefore, the Court is basing its determination on whether Father evidenced a settled purpose over the last six months.

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: N.M.B.*, 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). Both the Pennsylvania Superior Court and the Pennsylvania Supreme Court have interpreted what evidencing a settled purpose as required in 23 Pa. C.S. § 2511 (a) (1) entails and the respective courts have held:

. . . . that the section has been interpreted as requiring a deliberate decision on the part of the parent to terminate the parental relationship and that parent must persist in that determination throughout the six-month period. . . . The term “settled purpose” implies finality of purpose . . . . In our efforts to determine if such a purpose was present, this Court has required an “affirmative indication of a positive intent” to sever the parental relationship before we have upheld an involuntary termination.

. . . .

Thus, this court has held that evidence of parental inaction and lack of interest for six months does not conclusively establish a settled purpose.

*In re: Adoption of Charles Ostrowski* at 219-20 (citing *Adoption of Baby Girl Fleming*, 471 Pa. 73, 369 A.2d 1200, 1202 (Pa. 1977)).

In this case Father has not evidenced a deliberate decision to terminate his parental relationship. Father testified that in hindsight he realizes that he should have been more aggressive and proactive in maintaining a relationship with his daughter. He stated that he did not want to upset his daughter and he realized that she had a busy fulfilling life. He looked at Mother, MJF and himself as a part of a team with them taking care of the daily needs and him providing financial support. Father did continue to call Mother at work and inquire about his daughter; he would also text message his

daughter; ask his daughter to the movies or lunch; and in October 2012 just days before the filing of the petition for involuntary termination Father told Mother that he wanted more time with his daughter and that he wanted to follow the custody order that awarded him every other weekend. None of these actions are actions of someone that has a settled purpose to relinquish his parental claim. Father stated that he loves his daughter and he feels that she loves him. Father regrets not doing more. The Court finds Father to be credible and while Father should have been more involved in his daughter's life he did not intend to sever his parental relationship and responsibilities. In taking into consideration the totality of the circumstances and the testimony of all parties the Court does not find that Mother has met her burden of clear and convincing evidence that Father by conduct continuing for a period of at least six months immediately preceding the filing of the petition has evidenced a settled purpose of relinquishing parental claim to his child.

“Once the statutory requirement for involuntary termination of parental rights has been established under subsection (a), the court must consider whether the child's needs and welfare will be met by termination pursuant to subsection (b).” *In re A.S.*, 11 A.3d 473, 483(Pa. Super. Ct. 2010). An analysis of 23 Pa. C.S. § 2511 (b) is not necessary in this case due to the fact that the statutory requirements for involuntary termination have not been established.

**Conclusions of Law**

1. The Court finds that JLF has not established by clear and convincing evidence that MSD's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

The petition for involuntary termination of parental rights of Father, MSD is hereby DENIED.

By the Court,

Joy Reynolds McCoy, Judge