

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

IN RE: : **NO. 6354**
 :
TC :
 :
 a minor child, :

**OPINION IN SUPPORT OF THE ORDER OF OCTOBER 8TH, 2013, IN
COMPLIANCE WITH RULE 1925(a)(2) OF THE RULES OF APPELLATE
PROCEDURE**

This Court has reviewed the Concise Statement of the Matters Complained of on Appeal filed by the biological Mother, JG, on November 6th, 2013. The Opinion and Order of October 8th, 2013 is a comprehensive accounting of the evidence presented, findings of facts, and analysis. The Court relies on that Opinion and Order for this appeal. The findings of the Court are supported by the Transcript and exhibits of the hearing held on September 11th, 2013.

The Court will briefly address Mother's first matter in her Concise Statement of Matters Complained:

“The Court erred in determining that clear and convincing evidence existed to show that Defendant had a settled purpose to relinquish a parental claim under 23 Pa. Cons. Stat. § 2511 (a)(1), in that Mother was rebuffed by both Father and Grandmother in her attempts to maintain contact with the child and perform parental duties.”

TC was born September 8th, 2008. Mother was first incarcerated in October 2008 and then re-incarcerated in January 2009. After January 2009, Mother had very limited contact with Father. Mother's own testimony outlined less than ten attempts to contact the Father of her child from January 2009 until the filing of the Petition for Termination of Parental Rights on November 15th, 2013. Mother contacted Father via his cell phone and also via Facebook. Father directed Mother to contact Paternal Grandmother if she wished to discuss TC.

“the court must consider the barriers faced by parents to exercising their parental rights. The parent must exhibit reasonable firmness in attempting to overcome the barriers or obstructive behavior of others.”

In re: K.C.W., 689 A.2d 294, 299 (Pa. Super. Ct. 1997).

The Court does not view this as Father's method of rebuffing Mother's contact with the child, but a practical response. Pursuant to the custody Stipulation made an Order of Court and the practice of the parties, Paternal Grandmother was in the role of making parental decisions and held any information Mother may have sought regarding Tymire. Mother did not testify that she attempted to contact Paternal Grandmother regarding the minor child. Paternal Grandmother testified her phone number remained unchanged for over a decade. [*See*, Trial Tr. 9/11/2013, p.27, 3] Paternal Grandmother testified that she had informed Maternal Grandmother when she had a change of address in 2009. Mother did not testify she attempted to see the child at his residence.

Even if the behavior of Father is viewed as a barrier to Mother's ability to perform parental duties, Mother did not exercise reasonable firmness to overcome the

barriers. A few messages on Facebook or voicemails are not a demonstration of firmness.

Further, Mother made absolutely no attempts to parent during the periods she was incarcerated. An incarcerated parent is expected to utilize whatever resources are available to him while in prison in order to foster a continuing close relationship with his children. *In re V.E.*, 417 Pa.Super. 68, 611 A.2d 1267 (1992). Mother offered no testimony regarding her attempts to send letters or communicate with TC during her periods of incarceration. In fact, her efforts were minimal when not incarcerated.

As Grandmother met her burden of proving through clear and convincing evidence the elements of 23 Pa. C.S. § 2511 (a)(1) and the best interests element of 23 Pa. C.S. § 2511 (b), the appeal should be dismissed and the Court's Order of August 19th, 2013 affirmed.

By the Court,

Richard A. Gray, Judge

cc. Meghan Young, Esquire
Angela Lovecchio, Esquire
Jeffrey Frankenburg, Esquire
Judges