

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: : ORPHAN'S COURT DIVISION
: :
BW, : NO. 6374
a minor child. :

OPINION AND ORDER

AND NOW, this 4th day of September, 2013, following a hearing on the Petition for Involuntary Termination of Parental Rights, filed by Mother KP (Mother) and her ex-husband BP, held on July 10, 2013, and August 21, 2013, at which time the petitioners appeared with their attorney, Janice Ramin Yaw, Esq., Father MW (Father) appeared with his attorney, Kirsten Gardner, Esq., and the Court-appointed guardian ad litem, Timothy Reitz, Esq., appeared on behalf of BW, it is hereby ORDERED and DIRECTED that the petition is **DENIED**. The Court enters the following Findings of Fact and Conclusions of Law.

I. Findings of Fact

a. Parties

1. KP (Mother) is the natural mother of BW.
2. MW (Father) is the natural father of BW.
3. BP married Mother on May 3, 1997, separated from Mother in January 2005, and divorced Mother on July 30, 2007.
4. Mother and BP have two (2) children: a son, age 13, and a daughter, age 9 (Half-Siblings).
5. When Mother and BP separated, Mother moved into a home at 53 Waldron Lane, Muncy, Lycoming Township, Pennsylvania. Mother has lived in this home since her separation from BP.

6. BP has supported Mother's household from the time of their separation through the present.
7. BP lives in a separate household, located at 1101 Country Club Drive, Williamsport, Lycoming County, Pennsylvania.
8. Mother and Father's relationship began on April 1, 2005.
9. Father moved into Mother's home in Spring 2005.
10. BW was born on June 14, 2006, in Williamsport, Lycoming County, Pennsylvania.
11. Father was at the hospital with Mother when BW was born.
12. BP and his paramour (JH) visited BW in the hospital when she was born.
13. BW has been diagnosed with Pervasive Developmental Disorder – Not Otherwise Specified (PDD-NOS), on the autism spectrum, and Attention-Deficit/Hyperactivity Disorder (ADHD).
14. Since birth, BW has lived with Mother in her home in Muncy. From June 14, 2006 through September 30, 2008, Father also lived with BW in Mother's home. BP has never lived with BW, but BW has visited BP regularly at his home.

b. Protection from Abuse Order

15. Father lived in Mother's Muncy home until he was excluded from the property by a Temporary Protection from Abuse (PFA) Order entered on September 30, 2008 (Lycoming County Docket No. 2008-21335).
16. In addition to excluding Father from the property, the Temporary PFA Order provided that Father should have *no contact* with Mother and BW.
17. The Temporary PFA Order gave Mother temporary custody of BW.
18. On October 8, 2008, Mother obtained a Final PFA Order against Father.

19. The Final PFA Order precluded Father from contacting Mother.
20. The Final PFA Order also granted Mother primary physical custody of BW but it awarded Father periods of partial physical custody every weekend from 9:00 a.m. Friday through 7:00 p.m. on Saturday.
21. Father and BW visited during these times.

c. Amended Protection from Abuse Order

22. On November 26, 2008, Mother obtained an Amended PFA Order.¹
23. The Amended PFA Order lists BW as a protected party.
24. Additionally, the Amended PFA Order states:

ALL CUSTODY PROVISIONS FOR THE MINOR CHILD, [BW], ARE
SUSPENDED AND SHALL BE RESOLVED THROUGH A SEPARATE
CUSTODY PROCEEDING WHICH IS CURRENTLY PENDING IN THE
FAMILY COURT.

25. The Amended PFA Order did not expire until *October 8, 2011*.

d. Other Protection from Abuse Orders

26. In addition to Mother's order, Father had two (2) other PFA Orders against him.
27. On December 5, 2008, the Court granted a PFA Order in favor of BB and against Father (Lycoming County Docket No. 2008-21597). This order included two (2) of Father's children, AW (born 9/11/98) and AW (born 11/9/96), as protected parties. This order was effective until December 5, 2011.
28. On March 29, 2010, the Court granted a PFA Order in favor of JP and against Father (Lycoming County Docket No. 2010-20338). This order included JP's minor daughter,

¹ Mother based her November 25, 2008 Petition to Modify upon the allegations against Father found within a PFA petition filed by one of Father's paramours, BB. *See Findings of Fact 27 infra.*

ED, as a protected party. This order was effective until March 29, 2010. This order pertains to Father's 2010 criminal charges. *See Findings of Fact 37 infra.*

e. **Custody Action**

i. **April 27, 2009 Order**

29. On April 27, 2009, the Family Court granted Mother sole legal and physical custody of BW.

30. The April 27, 2009 Order also provided that *either* party could seek a review of the order. However, the order stated that this review could not occur until Father was evaluated by a psychologist. The Court requested that the evaluation process be completed within ninety (90) days.

ii. **December 14, 2009 Conference**

31. Upon petition of Father, the Court held a conference in the custody action on December 14, 2009.

32. The December 14, 2009 Order provided that Mother objected to Father having any contact with BW because BW was added as a protected party to the PFA Order.

33. The December 14, 2009 Order granted Father supervised visits with BW at the Lycoming County Children and Youth Agency (the Sharwell Building).

34. Ten (10) two-hour visits were held at the Sharwell Building between Father and BW from December 14, 2009, through February 23, 2010. Father attended all ten (10) meetings. Father was very appropriate during the visits with BW. Father was an active participant with BW; at every visit, Father played games with BW and he brought a snack and drink for her.

iii. February 23, 2010 Conference

35. At a follow-up hearing held on February 23, 2010, Father testified that his visits with BW at the Sharwell Building were going great but that two (2) hours a week was not enough time for him to have a relationship with his daughter.

36. At the February 23, 2010 custody conference, Mother and Father could not agree on an appropriate individual to supervise Father during his visits with BW. Based upon this standstill, the Court scheduled a hearing on the appropriateness of supervisors for April 22, 2010. In the interim, Father's once a week, two-hour visits continued at the Sharwell Building.

37. Also at the February 23, 2010 conference, Mother advised the Court that Father was facing animal cruelty charges, with his arraignment scheduled in late-March 2010. These charges originated from the death of JP's dog in mid-December 2009. *See Findings of Fact 28 supra.* JP did not contact the authorities regarding the dog's death; JP telephoned Mother about the incident and *Mother* contacted the Society for the Prevention of Cruelty to Animals (SPCA) on January 11, 2010.

38. In light of Father's pending charges and upon Mother's request, the Court ordered² Father to schedule another appointment with the psychologist in order to see if Father's ongoing visitation with BW was appropriate.

iv. April 22, 2010 Hearing

39. At the time of the hearing on the appropriateness of supervisors (April 22, 2010), Mother offered *no* suggested supervisors.

40. Following the testimony of Father's brother, JW (Brother), and over Mother's objections, the Court granted³ Father supervised visits outside of the Sharwell Building. The Court

² The order generated from the February 23, 2010 custody conference was docketed on March 17, 2010.

ordered Brother to supervise Father's visits at Brother's home. These supervised visits were to occur every Tuesday, from 9:00 a.m. until 11:00 a.m.⁴

v. July 6, 2010 Conference

41. By order dated July 7, 2010, the Court expanded Father's custodial time with BW. The Family Court Master found that Father's visits with BW at Brother's home went very well. Additionally, the Master found that BW was *well bonded* with Father. *See also* Resp. Exs. 1-2. The Court expanded Father's supervised custody time on Tuesday to 4:00 p.m. until 8:30 p.m., and added a Thursday visit from 4:00 p.m. until 8:30 p.m.
42. Generally, the July 7, 2010 order provided that Father's visits should still be supervised by Brother. However, the Court added that Father may take BW unsupervised to public places in the community, including the park and library.

vi. September 23, 2010 Conference

43. On September 23, 2010, the Court again expanded Father's custody time to every Tuesday and Friday from 9:30 a.m. until 2:00 p.m. Similar to the July 6, 2010 Order, Father's visits were to be supervised by Brother with the exception of time spent in the community.
44. The September 23, 2010 Order provided that Father's criminal trial was scheduled for late-October 2010, and scheduled a follow-up custody conference on December 2, 2010.
45. Brother testified that he supervised visits with Father and BW at least twelve (12) times.

vii. October 15, 2010 Incident

46. On October 15, 2010, *during* BW's visit with Father, Father had a pharmaceutical overdose as a result of taking Vicodin and Ritalin together. Father testified that he

³ The order generated from the April 22, 2010 hearing was docketed on May 6, 2010.

⁴ By order dated June 16, 2010, Father's visitation hours were changed to 4:00 p.m. until 6:00 p.m. because Father obtained a new job.

intentionally took the Vicodin because he sustained a work injury. The Vicodin was not prescribed to Father. Father accidentally took the Ritalin. The Ritalin, belonging to Brother's son, was located in an aspirin bottle. Father testified that he believed he was taking aspirin, also for his injury. The ambulance was dispatched to the home of Father's brother.

47. Father did not notify Mother of this incident.

viii. November 8, 2010 Emergency Custody Petition

48. On November 8, 2010, Mother filed an emergency custody petition based upon the October 15, 2010 incident.

49. On November 9, 2010, the Court granted Mother's emergency custody petition. The Court ordered Father's custody rights suspended and granted Mother sole physical custody of BW pending a November 12, 2010 hearing; Father's rights were suspended based solely upon the overdose, not upon any allegation of physical abuse of BW.

ix. November 12, 2010 Hearing

50. On November 12, 2010, the Court granted Mother's petition for emergency custody. However, the Court ordered that Father should have supervised visits at the Sharwell Building for at least two (2) hours once a week.

51. The November 12, 2010 Order noted that Defendant was scheduled to be sentenced on December 15, 2010.

52. Father testified that he attempted to set up an appointment at the Sharwell Building to visit with BW prior to his sentencing but that he was unable to get an appointment prior to his sentencing date. The Court finds this testimony to be credible.

53. Also in its November 12, 2010 Order, the Court provided:

after sentencing in the criminal case [Father] should contact *the Family Court* to arrange a custody conference to consider his progress in supervised visitation and to consider whether there should be an expansion of the supervised visitation. (emphasis added).

f. Father's State Incarceration and Parole

54. Father was incarcerated in a state correctional institution *from December 15, 2010*, until he was paroled on *February 23, 2012*.
55. Father's criminal records for Lycoming⁵, Northumberland⁶, and Union⁷ Counties were admitted into evidence at the hearing. Father's past criminal convictions include Aggravated Assault, Simple Assault, Resisting Arrest, Endangering the Welfare of Children, Cruelty to Animals, Harassment, Driving Under the Influence: Highest Rate, and Contempt of Court Order. *See* Pets. Exs. 10-12.
56. While Father was incarcerated, Mother and BP told BW that Father was away camping with men.
57. While Father was incarcerated, BP began taking BW with him when he exercised his custodial time with his own children (Half-Siblings).
58. Upon release from state incarceration and after meeting with his parole agent, Lisa Hoffman (Hoffman), Father believed that as a part of his parole conditions he was not to have contact with Mother. Father believed this contact to include third party contact.
59. Father testified that his parole officer, specifically Hoffman, told him to refrain from contacting Mother for a year. The Court finds this testimony to be credible.

⁵ Pets. Ex. 10.

⁶ Pets. Ex. 11.

⁷ Pets. Ex. 12.

60. Father's parole file notes that on February 28, 2012, Father and Ms. Hoffman discussed that he expected problems with Mother during his parole period. This note bolsters Father's testimony that Hoffman told him to refrain from contacting Mother.
61. Father's third parole agent, Joshua D. Kreiger (Kreiger), testified that there are no special conditions in Father's parole file that relate to his contact with Mother and BW. Kreiger testified that he himself never told Father not to contact Mother or BW.
62. Kreiger testified that a directive to refrain from contacting Mother and BW *should have been* placed in writing in Father's file as a special condition of his parole.
63. However, Kreiger also testified that Father *asked* Kreiger if Father could file custody paperwork regarding BW in the early part of 2013. Specifically, Father showed Mr. Krieger paperwork and Kreiger took the paperwork from Father and discussed Father's filing with the parole supervisor. Kreiger testified that he then called Father to tell him that he could proceed with the custody action. This testimony further bolsters Father's testimony that Ms. Hoffman told Father to refrain from contacting Mother for approximately one (1) year.
64. Brother testified that Father stated he was not allowed to file for custody of BW immediately because of his status as a parolee.
65. On April 15, 2013, Father completed the parole portion of his sentence.
- g. Child Support**
66. After Father was released on parole, the Domestic Relations Office located him through the parole office.
67. Father's child support was reinstated on March 2, 2012, by wage attachment.

68. Father attended two (2) hearings before the Family Court Master regarding his child support obligation for BW. These hearings occurred on April 6, 2012, and November 5, 2012. Both of these hearings pertained to Father's petitions to reassess his support obligation. Pets. Ex. 8.

69. Since Father's release, the Domestic Relations Office has not issued any bench warrants against Father for non-payment of his support obligation.

70. As of July 2013, Father's support obligation was in an over-paid status.

h. Father's Custody and Mother and BP's Termination Petitions

71. In February 2013, Father was granted permission by the State Board of Probation and Parole to file for custody and visitation with BW.

72. On February 27, 2010, Father filed a Petition for Modification of Existing Order in Mother and Father's custody action. Father requested modification because:

[Father] is wanting to seek and spend time with his daughter in which he [has not] seen in just over 3 years [because Father] was incarcerated for 19 months and had just gotten back up on his feet and now has all the arrangements.

73. On March 28, 2013, Mother and BP filed a petition to terminate Father's parental rights.

74. On April 1, 2013, Mother filed a Motion for Stay. Mother believed it would be detrimental for BW to allow Father to have contact with BW before deciding her and BP's termination petition.

75. On April 5, 2013, the Court dismissed Father's modification petition because Father failed to appear at the custody conference. Father failed to appear at the April 5, 2013 hearing because he believed it was cancelled.⁸

⁸ This confusion was memorialized in an order dated April 19, 2013.

76. On May 17, 2013, Father filed a motion for reconsideration of the April 5, 2013 order dismissing his modification petition. On July 9, 2013, this reconsideration was stayed pending the outcome of the instant matter.

i. Testimony

77. BW currently lives with Mother and Half-Siblings in Mother's home in Muncy.

78. Father presently lives at 661 Grier Street, Williamsport, Lycoming County, Pennsylvania.

79. Father last had contact with BW in October 2010.

80. Father testified that although his PFA Order regarding Mother and BW expired on October 8, 2011, he could not contact either Mother or BW from the State Correctional Facility. Father testified that Mother and BW were listed as protected parties, which he could not contact, within the state correctional institution, despite the expiration of the PFA Order. Father testified that when the PFA Order expired, he had to get approval from the prison to contact Mother and BW. Father testified that this approval process would take a few months, likely longer than it would take Father to finish his sentence. The Court finds Father's testimony as to this fact to be credible.

81. Mother testified that the last time BW asked about Father was approximately January 1, 2013. Specifically, Mother testified that BW asked if Father was dead. Mother believes that BW asked this question because the last time BW saw Father was when he was involved in the pharmaceutical overdose.

82. BW refers to BP as "daddy" in the pictures and drawings submitted to the Court. Pets. Exs. 1-5, 13-14. However, the Court notes that in one of the drawings BW refers to BP as her "*now daddy.*" Pets. Ex. 5.

83. BP testified that he would be involved in BW's life regardless of the result of the termination proceeding.⁹

84. Father has custody rights to his two (2) children with BB. BB and these children appeared in the courtroom behind Father during closing arguments on August 21, 2013.

II. Conclusions of Law

1. 23 Pa. C.S. § 2511(a)(1) provides:

§ 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 one of the following grounds:

(a) 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.

Id. (emphasis added). *See also In the Interest of C.S.*, 761 A.2d 1197, 1201 (Pa. Super Ct. 2001).

2. When considering the six month period immediately preceding the filing of the termination petition, the Court should consider the entire background of the matter instead of mechanically applying the six month provision. *In re: B.N.M.*, 856 A.2d 847, 855 (Pa. Super. Ct. 2004), *appeal denied*, 872 A.2d 1200 (Pa. 2005), citing *In re: D.J.S.*, 737 A.2d 283, 286 (Pa. Super. Ct. 1999). Specifically, our Superior Court has provided the termination court:

must examine the individual circumstances of each case and consider all explanations offered by the parent facing termination of his ... parental rights, to

⁹ BP has been a positive force in BW's life and has been a strong, consistent father figure to her.

determine if the evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination.

Id.

3. A parent's rights will not automatically be forfeited by failure of the parent to have contact with the child for a six month period. *Adoption of M.S.*, 664 A.2d 1370, 1373 (Pa. Super. Ct. 1995); *In re: K.C.W.*, 689 A.2d 294, 299 (Pa. Super. Ct. 1997).

4. When considering the statutory time frame,

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 at 299.

5. In *Adoption of M.S.*, *supra*, our Superior Court noted:

where a parent makes *reasonable* attempts to overcome obstacles created by the party seeking to terminate parental right, a mere showing that the parent could conceivably have pursued legal action more promptly cannot justify termination of parental rights.

664 A.2d at 1374 (citations omitted) (emphasis in original).

6. The combination of state incarceration, a no contact PFA Order, and BW's young age presented a substantial barrier for Father's contact with BW, explaining Father's failure to strongly assert his parental rights.
7. In this instance, Mother does not argue that Father has evidenced a settled purpose of relinquishing his parental claim to BW but that he has refused or failed to perform his parental duties.

8. In *In re: Burns*, 379 A.2d 535, 540 (Pa. 1997), our Supreme Court addressed what parental duties entailed; that Court provided:

[t]here 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 a 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 [of] 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 a 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.

Id. (citations omitted).

9. If the petitioning party proves that the statutory ground for termination has been met pursuant to 23 Pa. C.S. § 2511(a)(1), the Court must next consider the bond between the child and the parent facing termination. *See* 23 Pa. C.S. § 2511(b); *In the Interest of C.S.*, 761 A.2d at 1202.
10. 23 Pa. C.S. § 2511(b) states:

(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) ..., 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.

Id.

11. Generally, a petition to terminate a natural parent's parental rights filed by one natural parent against another is cognizable only if the adoption of the child is foreseeable. *In Re: E.M.I.*, 57 A.3d 1278, 1285 (Pa. Super. Ct. 2012). Therefore, at the termination hearing, the petitioning parent must demonstrate that the planned adoption is in the child's best interest and that a new parent-child relationship is foreseen. *Id.* at 1287.
12. The standard of review in involuntary termination of parental rights proceedings is clear and convincing evidence. *Adoption of M.S.*, 664 A.2d at 1373. Specifically:

[i]n a proceeding to involuntarily terminate parental rights, the burden of proof is upon the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so. The standard of clear and convincing evidence is defined as testimony 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 at issue.

Id. at 1373 (citations omitted).

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

14. The Court finds that Mother has not established by clear and convincing evidence that the developmental, physical, and emotional needs and welfare of BW will be best served by terminating Father's parental rights pursuant to 23 Pa. C.S. § 2511(b).

III. Discussion

In this instance, the Court cannot find, by clear and convincing evidence, that Father's parental rights should be terminated pursuant to 23 Pa. C.S. § 2511(a)(1). Throughout the course of the two (2) day hearing, Father repeatedly, consistently testified that he *could not* contact either Mother or BW because of Mother's PFA Order against him, the state correctional facility's safety protocols, and his parole officer's advice. The Court finds Father's testimony to be credible. Father's testimony was further bolstered by the testimony of Kreiger and Brother, and by the notes found in Father's parole file. The Court acknowledges that there was no written, special condition in Father's parole file that indicated he was not to contact Mother or BW or file for custody. However, Kreiger testified that at Father's first meeting with his original parole officer, Father's parole file indicates that Father and the officer discussed that Mother would be an impediment for Father completing parole successfully. Additionally, Kreiger testified that Father *asked Kreiger* if he could file for custody time with BW in early 2012. Kreiger testified that this question was "goofy" and not a normal question that parolees ask of him. Kreiger took Father's custody paperwork to discuss with his parole supervisor before calling Father to tell him that he could file for custody time with BW. This testimony fully supports Father's testimony that his first parole officer advised him to refrain from contacting Mother during the first year of his parole sentence.

Mother argues that Father's argument lacks credibility because Father attended support hearings in the first year of his parole sentence. The Court does not agree. In order to

successfully complete parole, it was imperative for Father to fulfill his child support obligations. If Father failed to pay his child support obligations, the Domestic Relations Office could have issued a bench warrant for Father and had the Court impose sanctions upon him. If this scenario occurred, Father could have also faced a state parole violation. Father attended two (2) support conferences in front of the Family Court Hearing Master. Father's conferences pertained to the modification of his support order to reflect his post-incarceration income. The Court finds that Father's actions were reasonable under the circumstances because they prevented Father from violating his support order. As testified to at trial, Father has not violated his support order since he was released from incarceration and is presently over-paid on his obligation.

The Court believes that the instant matter is similar to *Adoption of M.S., supra*. In that matter, our Superior Court affirmed the termination court's denial of maternal uncle and wife's petition to terminate the parental rights of mother to her daughter (child). Maternal uncle and wife had custody of child while mother was battling a mental illness. Maternal uncle involuntarily committed mother to the Norristown State Hospital (Norristown). Following mother's discharge from Norristown, mother voluntarily re-entered the hospital and stayed there for five (5) months. When mother was discharged from Norristown, she was under the supervision of a psycho-social day program that was operated in conjunction with the local mental health/mental retardation (MH/MR) services. Upon release from Norristown, mother filed a petition to modify custody that was dismissed on preliminary objections. Three (3) years later, when mother was terminated from MH/MR services, she filed a second petition to modify custody. Four (4) days after mother filed her second petition for custody, maternal uncle and wife filed their petition to involuntarily terminate mother's parental rights.

In that case, as here, it was undisputed that mother had not seen child for a lengthy period of time. *Id.* at 1373. In *Adoption of M.S.*, mother had not seen the child for approximately four (4) years. *Id.* Yet, in *Adoption of M.S.*, mother provided that she made substantial efforts to maintain contact with her daughter throughout these four (4) years, which were thwarted by maternal uncle and wife's conduct. *Id.* at 1373-74. Also, the Court took notice that during the time mother was absent from child's life, mother "clearly strove to control her mental illness and to establish a living situation wherein her child could thrive." *Id.* at 1374. The termination court stressed that during this time frame mother was "utilizing the means at her disposal to maintain the relationship with her child." *Id.* Additionally, the court noted mother:

was unable to telephone [child] after [maternal uncle and wife] changed their telephone to an unlisted number. [Mother] clearly stated that her reluctance to show up at [maternal uncle and wife's] doorstep was caused by her fear that [maternal uncle] would seek another involuntary commitment coupled with her belief that [maternal uncle and wife] had sought a *protection from abuse order* against her. [Maternal uncle] admitted to seeking a PFA order, however there is no such order in the record.

Id. (emphasis added). Based upon these facts, the termination court concluded that maternal uncle and wife failed to prove by clear and convincing evidence that termination of mother's parental rights was warranted under 23 Pa. C.S. § 2511(a)(1).

In the instant matter, Father has not seen BW for approximately three (3) years. However, from December 15, 2010, through February 23, 2012, Father was incarcerated at a state correctional facility, and Mother's PFA Order against Father, which included BW as a protected party, was effective until October 8, 2011. When this PFA order terminated, Father testified that he had to get approval through the state correctional institution to contact Mother. Father testified that this approval process could not be accomplished prior to his release date.

Upon release, Father testified that he spoke to his first parole officer about Mother and BW. Father testified that his first parole officer told him to refrain from contacting Mother because Mother had the potential to impede his successful completion of his state parole sentence. Father testified that as soon as he got permission from his latest state parole officer, Kreiger, to file for custody of BW, he filed. Considering the Court's knowledge of the state correctional facilities and the state parole system, the Court finds Father's testimony to be credible.

Before his state incarceration and despite Mother's PFA being in effect, Father had a good relationship with BW. Prior to his state incarceration, our Court found that Father and BW were well bonded. *See also* Resp. Exs. 1-2. While in state prison, Father had few, practical options to communicate with his young daughter. As soon as he was given permission by the state parole office to file for custody of BW, he promptly filed; this filing occurred before Mother and BP filed the instant termination petition. The Court finds that Father refrained from contacting Mother so as to not violate his PFA order or any parole conditions. Likewise, Father attended support hearings so as to refrain from violating his parole conditions. Also, Mother testified that BW asked about Father while he was in state prison; BW most recently asked about Father in January 2013. Lastly, the Court notes BW's drawing referring to BP as her "now daddy." The Court believes that these facts show BW at one point had a strong bond with Father.

The Court finds that Mother and BP failed to show by clear and convincing evidence that Father's rights should be terminated pursuant to 23 Pa. C.S. § 2511(a)(1), and that Father and BW do not have a bond pursuant to 23 Pa. C.S. § 2511(b).

The Court enters the following Order.

ORDER

AND NOW, this 4th day of September, 2013, for the reasons stated above, it is hereby ORDERED and DIRECTED that Mother and BP's petition to terminate Father's parental rights is **DENIED**. A custody conference is SCHEDULED for **October 1, 2013, at 1:00 p.m., in Family Court.**

BY THE COURT,

Date

Richard A. Gray, J.

cc: Janice Ramin Yaw, Esq. – Counsel for Mother and BP
Kirsten Gardner, Esq. – Counsel for Father
Timothy Reitz, Esq. – Guardian ad litem
Family Court
Gary L. Weber, Esq. – Lycoming County Reporter
Custody File (2008-21429)