

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

<b>IN RE:</b>	:	<b>NO. 6354</b>
	:	
<b>ADOPTION OF</b>	:	
<b>T.S.C.,</b>	:	
<b>Minor child</b>	:	

**OPINION AND ORDER**

**AND NOW**, this **8th** day of **October, 2013**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Grandmother, E.C., in regard to the rights of her grandchild, T.C., on November 15th, 2012. Grandmother seeks to terminate the parental rights of the child's biological mother, J.G., as a prerequisite to adopting the child. A hearing on the Petition was held on September 11th, 2013, at which time Mother was present with her counsel, Kathryn Belfy, Esquire. Grandmother was present with her counsel Meghan Young, Esquire. Father was present without counsel. The Guardian Ad Litem, Angela Lovecchio, Esquire, was present on behalf of the child.

**I. Findings of Facts**

**a. Parites**

1. T.C. was born on September 8<sup>th</sup>, 2008, in Williamsport, Lycoming County, Pennsylvania. He currently resides with his paternal Grandmother, E.C., at 1905 W. 3<sup>rd</sup> Street, Williamsport, Lycoming County, Pennsylvania.
2. The child's Mother is J.G., who is currently incarcerated at the State Correctional Institution at Muncy, Pennsylvania. Mother was incarcerated in May 2013. It is anticipated that Mother will remain incarcerated until September of 2014.
3. The child's Father is B.C., who resides at 324 Park Avenue, Williamsport, Pennsylvania 17701.
4. During the first few months of the child's life, the parties, including paternal Grandmother, exercised a shared custody schedule.

**b. Mother's Involvement in the Child's life**

5. Mother first became incarcerated in October 2008 and turned the child over to Father. Mother spent only a period of a few days incarcerated.
6. Mother testified that during this period of her life, her addiction made her incapable of caring for the minor child.
7. Mother was incarcerated again from the end of January 2009 until March 2009. Mother did not attempt to contact Father or the child during this period of incarceration.
8. Mother did not see her child from the period of March 2009 until her next date of incarceration. Mother did contact Father on at least one occasion.

9. Mother was incarcerated from June 23, 2009, until December 12, 2009.  
Mother made no attempt to contact the minor child during this period.
10. Mother was released from December 12, 2009 until December 24, 2009.  
During this period, Mother made no attempts to contact Father, paternal Grandmother or the minor child.
11. Mother spent the majority of 2010 either incarcerated or in various rehabilitation facilities.
12. Mother's only attempted contact was a phone call to the minor child around the time of his birthday in 2010 but the phone call was not returned.
13. In February 2011, Mother was released from her rehabilitation program.  
Mother made one call to Father's cell phone in March 2011.
14. Beginning in April 2011, Mother was incarcerated for a period of 90 days.
15. After her release, Mother attempted to contact Father through Facebook on two occasions.
16. Mother was incarcerated on October 16, 2011, and released on October 23, 2012. During this period, Mother made no attempts to contact her child.
17. After her release, Mother sent several messages to Father on Facebook from the period of October 23, 2012 until the filing of this petition on November 15, 2012. Grandmother contacted Mother regarding voluntary termination.
18. Mother sent the child no gifts, cards, or letters.
19. Mother has not seen the child since at least January 2009.

**c. Father's involvement with the minor child**

20. Father and Paternal Grandmother entered into a custody stipulation in October 2010 granting Grandmother sole legal custody and primary physical custody, due to Father's incarceration.
21. This Custody Stipulation remained in effect until the time of filing of the Petition for Termination.
22. Father agreed that Mother had contacted him sporadically regarding the minor child.
23. Father indicated that he told Mother any decisions or information on the minor child would need to be communicated through Grandmother. Father's testimony was credible.
24. As of the time of the hearing, Father has an active role in T.C.'s daily life.
25. T.C. has lived with only Grandmother since February 2013. Prior to February 2013, Father, Grandmother and the minor child all resided at the 1905 West 3<sup>rd</sup> Street address.
26. At the time of the hearing, Father had the same cell phone number for at least a period of two years.

**d. Grandmother's involvement in the minor child's life.**

27. T.C. spent his first night home from the hospital in the care of Grandmother.

28. With the consent of both natural parents, Grandmother exercised her own periods of physical custody during the child's first few months.
29. Grandmother changed addresses in May 2009 to her current address. Grandmother informed Maternal Grandmother of her new address. This testimony was credible.
30. Grandmother has had the same telephone number for 15 years.
31. T.C. refers to Grandmother as "mommy" or "mama".
32. Grandmother has been taking T.C. to doctor's appointments, beginning with his first well baby visit.
33. Grandmother has missed work when necessary to care for T.C..
34. Grandmother considers T.C. her son.
35. Grandmother includes T.C. in activities with her other son, Carl Anthony Artabelle, III.
36. Grandmother cared for T.C. during both parents' periods of absence.
37. Both Mother and Father have abdicated the majority of responsibility for Tyrmire to Grandmother since his birth.

## **II. Standing**

1. 23 Pa. C. S. § 2512 provides:

### **§2512. Petition for involuntary termination.**

**(a) Who may file.**--A petition to terminate parental rights with respect to a child under the age of 18 years may be filed by any of the following:

(1) Either parent when termination is sought with respect to the other parent.

(2) An agency.

(3) The individual having custody or standing in loco parentis to the child and who has filed a report of intention to adopt required by section 2531 (relating to report of intention to adopt).

(4) An attorney representing a child or a guardian ad litem representing a child who has been adjudicated dependent under 42 Pa.C.S. § 6341(c) (relating to adjudication).

2. Grandmother, E.C. has custody by Stipulation of October 2010 and also stands in loco parentis to the minor child, T.C.. Grandmother is exempt from filing a report of intention to adopt. *See* 23 Pa. C. S. 2531(c).

### **III. 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:

(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.

*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 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. Mother's incarceration alone does not create a substantial barrier for Mother's contact with T.C..
7. Father's directive that Mother contact Grandmother regarding the child and his general non-responsiveness combined with Mother's periods of incarceration do not create a substantial barrier for Mother's contact with T.C..
8. In this instance, Grandmother argues that Mother has evidenced a settled purpose of relinquishing her parental claim and has refused or failed to perform her parental duties.
9. 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).

10. 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.
11. 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.*

12. 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., 761 A.2d 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. Ct. 2008)(citing In Re: I.A.C., 897 A.2d 1200, 1208-09 (Pa. Super. Ct. 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. Ct. 1996), appeal denied, 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. Ct. 2007).
13. 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., 761 A.2d at 1202.

14. 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.
15. 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).

16. "[P]arental 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 his or her immediate physical and emotional needs."

In re Adoption of Godzak, 719 A.2d 365, 368 (Pa.Super.1998) (citation omitted).

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

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

#### **IV. Discussion**

In this instance, the Court finds Petitioner has met her burden of clear and convincing evidence, that Mother's parental rights should be terminated pursuant to 23 Pa. C. S. §2511 (a). Mother has both evidenced and settled purpose to relinquish her claim to the child and failed to perform parental duties.

Mother has completely failed to perform parental duties since January of 2009. Mother has not seen the child for approximately the same amount of time. Mother has

not provided gifts or cards. Mother's attempts to contact Father were only made when she was released from prison. A parent cannot wait until a more convenient time to carry out their parental duties. Mother's only attempts were made at the times most convenient for her.

Mother's settled purpose to relinquish her claim is demonstrated by her inaction. Mother knew she had the ability to seek Court intervention but did not pursue any action. The address of paternal Grandmother and her child would have been of record with Court from the entering of the custody Stipulation on October 26<sup>th</sup>, 2010. Mother testified to her periods of incarceration by specifically indicating her commitment and release dates. Mother was unable to be as specific about the less than 10 times she has attempted to inquire about her son during the course of the 3 years prior to the filing of the Petition for Termination. During Mother's periods of incarceration, Mother only left one voicemail regarding her son.

Mother uses Father's unresponsiveness to her occasional messages as a roadblock to explain her failure to perform parental duties or negate the evidence of her settled purpose to relinquish her parental claim. Father's testimony that he directed Mother to speak to Grandmother is credible. Mother offered no evidence of her reasonable attempts to overcome this "obstacle". The law requires more of a parent than to abandon all effort because a voicemail is not returned.

The Court must now turn to the "other considerations" to be considered in Termination. The Court finds Petitioner has met her burden of clear and convincing

evidence, the Mother's parental rights should be terminated pursuant to 23 Pa. C. S. §2511 (b).

The Court finds that no bond exists between Mother and T.C.. At the time of the hearing, T.C. was five years old and had not seen his Mother since he was a few months old. T.C. refers to his Grandmother as "Mommy". There would be no trauma to T.C. should the parental rights of Mother be terminated. Termination of Mother's rights would not destroy an existing, necessary and beneficial relationship as there currently exists no relationship between Mother and T.C.. The developmental, physical and emotional needs and welfare of the child would best be served by termination Mother's rights and allowing T.C. to be adopted by his Grandmother.

Grandmother has demonstrated good cause why this adoption should proceed while natural Father maintains his parental rights. Grandmother has been the primary custodian of T.C. for the majority of his life. Since the child's birth Grandmother has had her own periods of custody. Periods of the child's life, Father resided with Grandmother and T.C.. Although there was not much evidence presented about Father's periods of incarceration, Father gave Grandmother sole legal and physical custody in October 2010. There was also testimony of Grandmother having custody during a period in which Father was on the run from law enforcement. Father moved out and left the child with Grandmother in February of 2013. Grandmother has been the only constant parent in T.C.'s life. Grandmother has certainly been T.C.'s de facto mother and often his only parent.

Accordingly, the Court will enter the attached Decree.

By the Court,

Richard A. Gray, Judge

cc. Meghan Young, Esquire  
Angela Lovecchio, Esquire  
Kathryn Bellfy, Esquire  
Gary Weber, Esquire  
Kathleen Engel, Secretary to Judge Gray

IN RE: : NO. 6354  
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ADOPTION OF :  
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: Minor child :

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

DECREE

AND NOW, this \_\_\_\_ day of **October, 2013**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of J.G., held on September 11<sup>th</sup>, 2013, it is hereby ORDERED and DECREED:

- (1) That the parental rights of J.G. be, and hereby are, terminated as to the child above-named;
- (2) That the welfare of the child 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 mother.

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,

Richard A. Gray, Judge

JRM/jrr

cc. Angela Lovecchio, Esquire  
Meghan Young, Esquire  
Kathryn Bellfy, Esquire  
Kathleen Engel, Secretary to Judge Gray