

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

**IN RE:** : **NO. 6399**  
:   
**ADOPTION OF** :   
**AJM,** :   
:   
**Minor child** :

**OPINION AND ORDER**

**AND NOW**, this 10<sup>th</sup> day of **March, 2014**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, DB, in regard to the rights of her child, AJM, on October 29th, 2013. Mother seeks to terminate the parental rights of the child's biological father, RC, as a prerequisite to having the child adopted by her Husband, KB. A hearing on the Petition was held on March 7, 2014, at which time Mother and her Husband, KB, were present with their counsel, Jeffrey Yates, Esquire. Father was present with his counsel, C. Rocco Rosamilia, Esquire. The Guardian Ad Litem, Gail Hills, Esquire, was present on behalf of the child.

**Findings of Facts**

1. AJM was born on September 4<sup>th</sup>, 2011 in Lewisburg, Union County, Pennsylvania. He currently resides with his Mother, DB, step-father, KB, maternal grandmother, maternal grandfather and maternal uncle at 512 McKeag Lane, Jersey Shore, Lycoming County, Pennsylvania.

2. The child's Mother is DB (formerly DM), who was born on November 14<sup>th</sup>, 1991. She is currently married to KB who was born on September 16<sup>th</sup>, 1989. DB and KB were married on October 28<sup>th</sup>, 2013.
3. The child's Father is RC, he resides in Muncy, Pennsylvania.
4. Mother and Father were never married although the parties did reside together prior to the child's birth. For a period of time the parents lived with the maternal grandparents.
5. The parties separated prior to the child's birth. Mother returned to the home of the maternal grandparents.
6. For a period of time of less than six months after the child's birth, Father was working out-of-town Monday through Thursday. During this period of time Father would spend one or two weekend nights at Maternal grandparents visiting the minor child.
7. Father did provide monetary support for the child on three occasions during the child's first six months. There is no support action in this matter.
8. During this period, Mother and her family allowed Father to stay in her home overnight. Mother also provided transportation for Father's visits.
9. At some point prior to the child reaching the age of six months old, Father completely stopped his visitation.
10. Father said he stopped contact because he did not wish to "butt heads" with Mother. Father gave no examples of this happening.

11. Father visited his son in September 2012. This is the last interaction Father had with son.
12. Father moved to Philadelphia from December 2012 until February 2013. Mother was unsure of where Father was residing. Mother heard Father had moved to Philadelphia.
13. Father saw Mother, KB and the child at an ice cream restaurant in May 2013. Father made no attempt to speak to his son because he did not want conflict.
14. Father gave no examples of conflict with Mother that would rise to a level as to deter contact with his son.
15. Father made no attempts to contact his son from February 2013 until September 2013. Father said he did not want to put himself in an uncomfortable situation.
16. Father spoke to maternal grandmother about a visit with his son in September 2013. The child was not home. On or about the same date, Father left voicemails for maternal grandmother. Father never came to the residence.
17. Mother has resided in the same residence throughout the child's life. The phone number for the residence has remained the same throughout the child's life.
18. Maternal Grandmother attempted to locate Father on at least two occasions.
19. Maternal Grandmother testified that there were no additional contacts by Father.

20. Father has never paid any child support on behalf of AJM beyond the two or three direct payments to Maternal Grandmother on AJM's behalf. Father refused to give these payments to Mother.
21. From February 2013 until the filing of the Petition to Involuntarily Terminate his parental rights on October 29, 2013, Father failed to have any communication with his child or Mother. Father did not send any gifts or cards to the child.
22. There were no obstacles put in place by Mother. Father did assert that at some point Mother began to tell him she was unavailable for him to come over to her house to visit their son.
23. When Mother did not have a working cell phone, she instructed Father to contact the phone number of the residence.
24. Father testified that he did not want to have his son be part of the court system.
25. Father stated that Mother's family was respectful and were not intimidating during his September 2012 visit.
26. Father's testimony was not credible; specifically claiming to have called the residence in excess of 20 times during the same period he testified he did not attempt contact.
27. Father filed a Petition for Custody on October 1, 2013. Mother was properly served November 1, 2013. The custody matter was stayed pending resolution of the Termination Petition.

28. Father testified that there was no bond between him and his son.
29. KB and the child have a close father-son relationship.
30. KB became part of the child's life in the Spring of 2012.
31. KB has been the only consistent Father figure in the minor child's life.
32. AJM calls Mr. B "daddy".

### **Discussion**

Mother asserts that the grounds for termination of the Father's parental rights may be found in 23 Pa.C.S. §2511(a)(1), which reads:

#### §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 evidence 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 §2511(a)(1) where a parent demonstrates a settled purpose of relinquishing parent claim to a child **or** fails to perform parental duties for at least six months prior to filing for the termination petition. In the Interest of C.S., 761 A.2d 1197, 1201 (Pa. Super. Ct. 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. Ct. 2004), appeal denied, 872 A.2d 1200 (2005) citing In Re: D.J.S., 737 A.2d 283, 286 (Pa. Super. Ct. 1999).

In order to determine 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 characterizes 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).

"[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).

In the instant matter, Father ceased visitation prior to his son being six months old. Father testified that he made this choice because he and Mother would butt heads. Father last saw the minor child in the September of 2012. From the February 2013 until

Mother's filing of the Petition to Terminate on October 29<sup>th</sup>, 2013, Father did not attempt to contact Mother or his child. In September 2013, Father did contact Maternal Grandmother regarding seeing his son. The minor child was not home at the time. Father sent no gifts or cards. Father paid no child support. Father completely failed to perform any sort of parental duties.

Father would ask the Court to consider his telephone calls to Maternal Grandmother and the filing of a Complaint for Custody within the 6-month period to be deemed performance of parental duties. The Court does not agree. For a period of six months Father allowed his child be without his love, protection, guidance, or support. Father did not even approach his son in the public setting of the ice cream restaurant in May 2013.

The statute requires this Court to consider the six-month period preceding Petition for termination; however this period shall not be mechanically applied. Even prior to the six-month period Father was at best sporadically contacting Mother. At the time of the filing of the Petition, AJM was three years old. Father had not seen AJM since he was two years old.

Father would have this Court consider the obstacles that were in place regarding continued contact with his child. Father testified he stopped his visitation due to conflict with Mother. However, this Court cannot find this testimony credible as no examples of such conflict were given. Father further testified that at some points Mother did not have a cell phone. At all points Mother and the minor child resided in the same residence where Father had previously resided with the same phone number to the residence.

The law is clear that parents may not wait until a more convenient time to become involved in their children's lives. Father's intentions do not excuse his refusal and failure to perform parental duties for a period well exceeding six months of his child's life.

Mother has met her burden of clear and convincing evidence that Father has refused or failed to perform parental duties for a period exceeding six months.

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., 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).



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.

The Court finds no bond exists between AJM and Father. AJM is three years old and has not seen Father since September of 2012. There would be no trauma to AJM should the parental rights of Father be terminated. Termination of Father’s parental rights would not destroy an existing, necessary and beneficial relationship as there currently exists no relationship between Father and AJM. The developmental, physical and emotional needs and welfare of the child would best be served by terminating Father’s rights and allowing AJM to be adopted by her step-father.

**Conclusions of Law**

1. The Court finds that DB, Mother, has established by clear and convincing evidence that RC’s parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. § 2511(a)(1).
2. The Court finds that DB has established by clear and convincing evidence that the developmental, physical, and emotional needs and welfare of AJM will best be served by termination of RC’s parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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**DECREE**

AND NOW, this 10<sup>th</sup> day of **March, 2014**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of RC, held on March 7, 2014, it is hereby ORDERED and DECREED:

- (1) That the parental rights of RC 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 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  
Pennsylvania Adoption Information Registry  
P.O. Box 4379  
Harrisburg, PA 17111  
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
4. Online at [www.adoptpakids.org/Forms.aspx](http://www.adoptpakids.org/Forms.aspx) .

By the Court,

Joy Reynolds McCoy, Judge