

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

**IN RE:** : **NO. 6404**  
 :  
**NT,** :  
 **minor child,** :

**OPINION AND ORDER**

**AND NOW**, this **11th** day of **April, 2014**, before the Court is Lycoming County Children & Youth Services' ("Agency") Petition for Involuntary Termination of Parental Rights of Father, KH ("Father"), filed on December 23, 2013. A Hearing on the Petition to Involuntarily Terminate Father's parental rights was held on April 7, 2014.

Charles Greevy, Esquire, Solicitor for the Agency, Julian Allatt, Esquire, counsel for Father, and John Pietrovito, Esquire, Guardian Ad Litem were present. Father failed to appear.

**Finding of Facts**

NT was born October 13, 2006 ("Child"). He is the child of KH and EM ("Mother"). Mother also has three other children, ZT, born March 14, 2004, OT born January 6, 2006, and ET, born October 14, 2007. ST is the biological father of these children. Mother and ST voluntary relinquished their parental right to their three children on April 7, 2014. Mother voluntary relinquished her parental rights to NT on April 7, 2014.

In May of 2011, all four children resided with extended family in New Jersey, due to Mother and ST being incarcerated. When the extended family was unable to continue

caring for the children, New Jersey's Division of Youth and Family Services contacted Lycoming County Children and Youth Agency. Both Mother and ST were incarcerated in Lycoming County, Pennsylvania. Child and his three brothers were placed in an Agency-approved resource home on May 6, 2011. The children were adjudicated Dependent on May 31, 2011. Father at all times has been a resident of New Jersey. Father failed to appear at the hearing despite Notice of the hearing and after having had a phone call with a CYS caseworker. Child's Permanency Plan dated May 6, 2011 allowed for biweekly visits between Father and child. Father did not visit with the child from the time of placement until August 23, 2011 following a Permanency Review Hearing. During August 2011 the Agency was pursuing Father as a resource through Interstate Compact Agreement process.

From August 24, 2011 until November 15, 2011 Father did not have contact have contact with the Agency or Child. The Agency continued its efforts through the Interstate Compact Agreement in regards to Father as a resource.

During the period of November 15, 2011 until February 7<sup>th</sup> 2012, Father had one visit with Child and no contact with the Agency. Father was denied as a resource through the Interstate Compact Agreement.

During the period of February 7, 2012 until May 8, 2012, Father had no visits with the child and did not write or call the child. Father had one short phone call with an Agency Caseworker. Father did not attend the Permanency Review hearing.

During the period of May 8, 2012 until July 31, 2012, Father had no contact with the Agency or Child. At this review hearing, the Agency was working towards placing Child in the home of paternal great-grandmother in New Jersey.

During the period of July 31, 2012 until January 29, 2013, Child was placed in the home of paternal great-grandmother in New Jersey. Father had no contact with the Agency but did have sporadic contact with NT through the resource home. Father did not attend either Permanency Review hearing held during the period.

During the period January 29, 2013 until May 9, 2013, Father had limited contact with Child at paternal great-grandmother's home. He made no contact with the Agency. Father received Federal charges during the review period. Paternal great-grandmother indicated she would no longer be able to be a resource for Child following the school year.

During the period May 9, 2013 until August 13, 2013, Father had no contact with the Agency. Child was placed in a new resource home on July 1, 2013. Father did not have contact with his son during this period. Father was incarcerated and subsequently released during the review period.

During the period August 13, 2013 until November 19, 2013, Father had no contact with Child or the Agency. Father did not attend the review hearing although properly given Notice.

During Child's placement Father was not compliant with the various Family Service Plans nor did he exert himself to become compliant with the Family Service Plans.

Jennifer Ishman, the Children & Youth Caseworker, testified that she became involved in the case in October 2011. Ms. Ishman met Father once at the Permanency Review hearing and subsequent visit with Child on November 15, 2011. Ms. Ishman testified that she writes letters monthly to update Father on Child's progress. These letters are not returned to the Agency. Ms. Ishman testified to the efforts the Agency had made to "track down" Father's address and phone numbers. The Agency's efforts to locate Father and efforts towards reunification were reasonable and appropriate. Ms. Ishman has had one phone call with Father since her involvement with the case until the date of the Termination hearing. Father had received in the mail a letter from the Domestic Relations Office and called to request his child support obligation be terminated. Father was concerned about his inability to obtain a passport. Ms. Ishman reported that Father only visited Child once during the year Child was in Paternal Great-Grandmother's care in New Jersey. Ms. Ishman testified that this lack of family support is what caused Paternal Great-Grandmother to decide not to be a resource home. Father has had no contact with Child since at least July 1, 2013. Child has received no letters, phone calls, or gifts from Father since prior to July 1, 2013. Child has never resided with Father. Ms. Ishman's testimony was credible.

Father failed to appear at the Termination hearing despite proper Notice of the hearing date.

### **Discussion**

The Agency argues that the basis for termination in this case may be found in 23 Pa.C.S. §2511(a)(1), (2), (5) and (8), 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 or has refused or failed to perform parental duties.
- (2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.
- (5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.
- (8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

In order to involuntarily terminate parental rights, the party seeking termination must prove by clear and convincing evidence the grounds for termination. *Santosky v. Kramer*, 455 U.S. 745 (1982); *In re Adoption of J.D.P.*, 471 A.2d 894, 895, (Pa. Super. Ct. 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)).

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 **or** fails to perform parental duties 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) (emphasis added). 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: 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)).

In determining 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 characterized 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). “When a child is in foster care, this affirmative duty requires the parent to work towards the return of the child by cooperating with the Agency to obtain rehabilitative services necessary for them to be capable of performing their parental duties and responsibilities.” *In re: G.P.R.*, 2004 Pa. Super. 205, 851 A.2d 967, 977.

The Court finds that for a period of at least six months prior to the Agency filing the Petition to Terminate Father’s Parental Rights, Father has failed to perform parental duties on behalf of the children. Father has had no contact with the Agency or the child since July 1, 2013. Prior to that Father’s contact with Child was at best sporadic but may have been limited to one visit during the year Child lived with paternal Great-Grandmother in New Jersey.

The Court hereby finds by clear and convincing evidence that the Agency has fulfilled the requirements of 23 Pa.C.S.A. §2511(a)(1) and that Father has failed to perform his parental duties for at least six months prior to the filing of the termination petition.

To satisfy the requirements of Section 2511(a)(2), the Agency must demonstrate that Father through:

- (1) [R]epeated and continued incapacity, abuse, neglect or refusal;
- (2) such incapacity, abuse, neglect or refusal has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being; and
- (3) the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.

*In re: Adoption of M.E.P.*, 825 A.2d 1266, 1272 (Pa. Super. 2003.)

Under Section 2511(a)(2), “[t]he grounds for termination [of parental rights] due to parental incapacity that cannot be remedied are not limited to affirmative misconduct. To the contrary, those grounds may include acts of refusal as well as incapacity to perform parental duties”. *In re: A.L.D.*, 797 A.2d 326, 337 (Pa. Super. 2002) (citations omitted). “Moreover, an agency is not required to provide services indefinitely if a parent is either unable or unwilling to apply the instruction given.” *Id.* at 340. “Parents are required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities. . . . [A] parent’s vow to cooperate, after a long period of uncooperativeness regarding the necessity or availability of services, may properly be rejected as untimely or disingenuous.” *Id.*, quoting *In re J.W.*, 578 A.2d 952, 959 (Pa. Super. 1990)

Father’s actions exemplify repeated incapacity and/or refusal to act resulting in the child being without essential parental care, control, or subsistence necessary for the physical or mental well-being. Father has had little to no contact with the Agency or Child since his placement. Child entered placement at four years old. Child is now seven years old. Father has failed to maintain even the minimal requirement of the Agency that he contact the Agency once per month regarding his child. Father’s home was not approved as a resource for the child and there was no evidence that he made any effort to remedy that situation or requests for reconsideration.



The Court finds by clear and convincing evidence that the Agency has fulfilled 23 Pa.C.S.A. §2511(a)(2) by demonstrating Father's repeated and continued incapacity, abuse, neglect or refusal and that such incapacity, abuse, neglect or refusal has caused the children to be without essential parental care, control or subsistence necessary for their physical or mental well-being which have not been remedied.

“Termination of parental rights under Section 2511(a)(5) requires that: (1) the child has been removed from parental care for at least six months; (2) the conditions which led to removal and placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child.” *In re: K.J.*, 936 A.2d 1128, 1134 (Pa. Super. 2007).

Similarly, to terminate parental rights pursuant to 23 Pa.C.S.A. §2511(a)(8), the following factors must be demonstrated: “(1) [t]he child has been removed from parental care for 12 months or more from the date of removal; (2) the conditions which led to the removal or placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child.” *In re: Adoption of M.E.P.*, 825 A.2d 1266, 1275-76 (Pa. Super. 2003); *see also* 23 Pa.C.S.A. §2511(a)(8). “Section 2511(a)(8) sets a 12-month time frame for a parent to remedy the conditions that led to the children's removal by the court.” *In re: A.R.*, 837 A.2d 560, 564 (Pa. Super. 2003). After the 12-month period has been established, the Court must next determine whether the conditions necessitating placement persist, despite the reasonable good faith efforts that the agency supplied over a realistic time period. *Id.* In terminating parental rights under Section 2511(a)(8), the trial court is not required to evaluate a parent's current

“willingness or ability to remedy the conditions that initially caused placement”. *In re: Adoption of T.B.B.*, 835 A.2d at 396 (Pa. Super. 2003); *In re: Adoption of M.E.P.*, 825 A.2d at 1276.

In the present case, Child has been removed from the parental care of Mother since May of 2011, which at the time of the hearing to terminate Father’s parental rights was approximately 35 months. Child has been removed from the care of Mother since he was approximately four years of age.

At the time that the children were removed from Mother’s physical care, Mother and Father were not residing together. For the time that the child has been in placement, Father has only seen Child sporadically. He has only been in touch with the Agency concerning his child on a few occasions.

NT deserves permanency in his life. Terminating Father’s rights will best serve the needs and welfare of the child. The Court finds by clear and convincing evidence that the Agency has fulfilled 23 Pa.C.S.A. §2511(a)(5)(8) as the child has been removed from the parents’ care for 35 months, that the conditions which led to the original removal of the child still continue to exist to date, and that termination of Father’s parental rights would best serve the needs and welfare of the child.

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 condition described therein which are first initiated subsequent to the giving of notice of the filing of the petition.”

The Court must also 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.*, supra at 1242. 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. 2008), (citing *In Re: I.A.C.*, 897 A.2d 1200, 1208-1209 (Pa. Super. 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, 1996), appeal denied, 546 Pa. 697, 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. 2007).

“Before granting a petition to terminate parental rights, it is imperative that a trial court carefully consider the intangible dimensions 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 dimensions. Continuity of a relationship 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 child’s needs and welfare, must resume the status of the natural parental bond to consider whether terminating the natural parent’s rights would destroy something in existence that is necessary and beneficial.”

*In Re: Interest of C.S.*, supra at 1202 (citations omitted).

“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).” *Id.* at 483 “Common

sense dictates that courts considering termination must also consider whether the children are in a pre-adoptive home and whether they have a bond with their foster parents.”

*In re T.S.M.*, 71 A.3d 251, 268 (Pa. 2013)(citation omitted).

The Court does not find that terminating Father’s parental rights would destroy an existing relationship that is necessary and beneficial to the child at this stage in his life. Additionally, in light of the fact that Father has had no contact with the children since at least July 1<sup>st</sup>, 2013, and contact was very limited throughout Child’s entire life the Court does not find that there is an existing relationship between Father and the child. A bonding assessment was not completed in regards to Child’s bond with Father. However, the bonding assessment completed in regard to Child and Mother did address the issue of Child’s relationship with his Foster Mother. Child is currently in a pre-adoptive home. Child is bonded closely to his Foster Mother. NT’s developmental, physical and emotional needs and welfare will best be served by termination of Father’s parental rights in order to allow the adoption by Foster Mother.

**Conclusions of Law**

1. The Court finds that the Agency has established by clear and convincing evidence that KH's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1, 2, 5 and 8).

2. The Court finds that the Agency has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of NT will best be served by termination of KH's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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

**IN RE:** : **NO. 6404**  
 :  
**NT,** :  
 :  
**minor child,** :

**DECREE**

**AND NOW**, this **11th** day of **April, 2014**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of KH, held on April 7, 2014, it is hereby **ORDERED** and **DECREED**:

- (1) That the parental rights of KH 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