

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

**IN RE:** : **NO. 6463**  
:   
**KAM,** :   
:   
minor child, :   
:

**OPINION AND ORDER**

**AND NOW**, this 13<sup>th</sup> day of **July, 2015**, before the Court is a Petition for the Involuntary Termination of Parental Rights of the biological parents, JEM and MDM, Jr. The Petition was filed by PN and CN on February 23, 2015. PN and CN seek to terminate the parents' parental rights to their son, KAM, born August 15, 2013. PN and CN appeared at the time of the Hearing with their counsel, Michael Collins, Esquire. Neither Mother nor Father appeared at the time of the Hearing. Mother was served with notice of the Hearing by certified and regular mail on or about June 5, 2015. Father was served by personal service on June 4, 2015.

1. KAM was born on August 15, 2013, in Cambridge Springs, Crawford County, Pennsylvania.
2. JEM is the biological Mother of KAM.
3. MDM, Jr., is the presumptive Father of the child.
4. At the time of the child's birth, JEM and MDM, Jr., were married.

5. At the time of the child's birth, Mother was incarcerated at SCI-Cambridge Springs.

6. In July, 2013, CN was contacted by her friend, Lori, to inquire as to whether or not she would willing to care for baby that was due to be born to an inmate at SCI-Cambridge. It was anticipated that it would be short-term.

7. After KAM's birth, CN was notified that the child had been born; however, he remained hospitalized for a period of two weeks.

8. KAM spent approximately two weeks in the NICU due to the fact that he was experiencing drug withdrawals.

9. While KAM was in the NICU, CN went to visit with him in the hospital.

10. On August 26, 2013, KAM was released from the hospital and spent several days with Lori.

11. On August 31, 2013, PN and CN picked KAM up from Lori and were also provided with Power of Attorney papers signed by Mother which authorized them to care for KAM.

12. On September 27, 2013, CN went to SCI-Cambridge Springs to visit Mother and brought KAM to this visit.

13. In mid to end November, 2013, CN again went to SCI-Cambridge Springs to visit with Mother and brought KAM with her. Mother held KAM during this visit.

14. During this visit, Mother indicated that she would soon be released to a half-way house and that she would like to meet half-way between Cambridge Springs and the half-way house to see KAM.

15. During this visit, CN made the statement that she would love to adopt KAM if, at any point, Mother wished to have him adopted.

16. Mother made a vague statement back to CN that she always thought she would leave KAM where he was.

17. Over the Winter of 2013, CN and Mother exchanged letters. In her letters, Mother would ask about KAM.

18. Mother was released from SCI-Cambridge Springs in February, 2014, and went to a half-way house in Harrisburg, Pennsylvania.

19. CN was not aware when Mother was released.

20. Mother next contacted CN by letter in March, 2014, which provided a phone number and email where to reach Mother and asked that she contact her as soon as possible.

21. CN attempted to call Mother on several occasions and, when she would call, she would only get through to what she describes as a "Spanish-speaking operator".

22. CN also sent one email to Mother to which there was no response.

23. In May, 2014, CN and PN moved from Danville, Pennsylvania, to Trout Run, Pennsylvania. They had their mail forwarded through the US Post Office and mail was forwarded from May, 2014, through May, 2015.

24. CN and PN received no further contact from Mother after the letter in March, 2014.

25. After the Petition to Involuntary Terminate Parental Rights was filed, Mother did contact the attorney for CN and PN.

26. Mother did not appear at the Pre-Trial Conference which was scheduled on April 24, 2015, nor did she appear at the Hearing on the Involuntary Termination of her parental rights.

27. At one point, Mother did indicate that she believed the biological father of the child was Ryan. (Ryan's last name was never testified to.)

28. CN had contact with Ryan's mother and, once Ryan was released from incarceration, met with Ryan and his mother at Perkin's Restaurant. Ryan's mother performed a paternity test at the Perkin's Restaurant through a mouth swab and sent the results to a lab for testing.

29. The results of that testing indicated that Ryan was not the biological father of KAM.

30. When Ryan advised Mother he was not the biological father of KAM, Mother indicated that her husband, MDM, Jr., was the father.

31. MDM, Jr., has not had any contact with KAM since birth, nor has he responded to the Petition to Involuntary Terminate his parental rights to KAM, nor has he appeared at the Pre-Trial Conference or the Hearing on the Petition to Involuntary Terminate his parental rights.

32. PN and CN filed an Intent to Adopt and Petition for Adoption on July 13, 2015.

The basis for termination in this case may be found in 23 Pa.C.S.

§2511(a)(1), 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.

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 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). 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).

Both the Pennsylvania Superior Court and the Pennsylvania Supreme Court have interpreted what evidencing a settled purpose at required in 23 Pa. C.S. § 2511 (a) (1) entails and the respective courts have held:

. . . . that the section has been interpreted as requiring a deliberate decision on the part of the parent to terminate the parental relationship and that parent must persist in that determination throughout the six-month period. . . . The term “settled purpose” implies finality of purpose . . . . In our efforts to determine if such a purpose was present, this Court has required an “affirmative indication of a positive intent” to sever the parental relationship before we have upheld an involuntary termination.

.....  
Thus, this court has held that evidence of parental inaction and lack of interest for six months does not conclusively establish a settled purpose.

***In re: Adoption of Charles Ostrowski*** at 219-20 (citing ***Adoption of Baby Girl Fleming***, 471 Pa. 73, 369 A.2d 1200, 1202 (Pa. 1977)).

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)).

The Court finds that as of the date of the filing of the Petition to Involuntarily Terminate the Parental Rights of both of the biological Mother and Father, they have both failed and refused to perform their parental duties for a period of time in excess of six months. In fact, neither parent has performed any duties on behalf of the child since the child’s birth. Father has shown no interest whatsoever in the child. He has never contacted CN or PN, nor did he contact their counsel once a Petition to Involuntarily Terminate his parental rights was filed. Additionally, the fact that he has failed to appear at any hearing scheduled in this matter demonstrates to the Court a settled purpose of relinquishing his parental claim to KAM. Though Mother had two visits with the child immediately

following his birth, these visits were made at the effort of CN traveling to the Prison to visit with Mother. Despite Mother being released from incarceration, she has failed to take any steps to have any contact whatsoever with the child. Additionally, Mother has failed to appear at any hearings scheduled in regard to the involuntary termination of her parental rights. The Court finds that Mother has evidenced a settled purpose of relinquishing her parental claim to KAM.

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.*, supra, 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. 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. 674, 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* 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., supra., at 1202 (citations omitted).**

In the present case, KAM has never met the Father. The only contact he has had with Mother was when he was approximately two months of age and four months of age. KAM has been in an intact family with PN and CN since August 31, 2013. KAM refers to CN as "mom" and PN as "dad". KAM clearly has no bond whatsoever with Mother or Father and, in fact, would not have any idea who these two individuals were. A termination of their parental rights will not destroy an existing, necessary and beneficial relationship as there currently exists no relationship between them and KAM. The only parental bond which KAM has at this point in time is with CN and PN, the individuals that he sees as mom and dad.

### **Conclusions of Law**

1. The Court finds that CN and PN have established by clear and convincing evidence that the parental rights of JEM and MDM, Jr., should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).



2. The Court finds that CN and PN have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of KAM will best be served by the termination of the parental rights of JEM and MDM, Jr.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

JRM/jrr

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
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IN RE: : NO. 6463  
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**DECREE**

**AND NOW**, this 13<sup>th</sup> day of **July, 2015**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JEM and MDM, Jr. held on this date, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JEM and MDM, Jr., 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 or father.

**NOTICE OF APPELLATE RIGHTS**

Pursuant to Pennsylvania Rules of Appellate Procedure 901-908, you have thirty (30) days after the date of entry of this Order in which to take an appeal. The appeal must be in writing and filed in the Prothonotary's Office.

**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

JRM/jrr