

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

**IN RE:** : **NO. 6489**  
:   
**AC,** :   
:   
minor child, :   
:

**ORDER**

**AND NOW**, this 1<sup>st</sup> day of **September, 2016**, after a hearing held on August 24, 2016, in regard to the Petition for Involuntary Termination of Parental Rights filed on January 19, 2016, by Maternal Great-Uncle, JTC, and his wife, Maternal Great-Aunt, PEC (collectively, "Petitioners"), with regard to the parental rights of PEC ("Father") to his daughter, AC ("Child"). Petitioners seek to terminate Father's parental rights as a prerequisite to adopting the Child. A hearing was held on August 24, 2016, wherein Petitioners were present and represented by Melody L. Protasio, Esquire, and Father, despite being served by publication with notice of the time, date, and location of the hearing, did not appear. Child's biological Mother, JM, is deceased.

**Finding of Facts**

1. AC was born on December 19, 2007, in Lehigh County, Pennsylvania.
  2. Child's Mother is JM, who is deceased. Her date of death was January 9, 2016.
- (Pet. Ex. 1).

3. Father is PEC. Father resides in Scranton, Lackawanna County, Pennsylvania.
4. Counsel for Petitioners served Father with a copy of the Notice of the Petition to Involuntarily Terminate Parental Rights, along with the time, date, and location of the hearing by publication in the Scranton Times, a newspaper doing circulation in Scranton, Lackawanna County, on June 28, 2016.
5. Counsel for Petitioners served Father with a copy of the Notice of the Petition to Involuntarily Terminate Parental Rights, along with the time date, and location of the hearing by publication in the Lackawanna Jurist, a legal newspaper doing circulation in Scranton, Lackawanna County, on July 1, 2016.
6. Petitioners reside at 1609 Elmira Street, Williamsport, Pennsylvania 17701.
7. Petitioners have been married for approximately 28 years.
8. Petitioners are the maternal great aunt and great uncle of Child.
9. Child has resided with Petitioners since December 13, 2010.
10. A custody trial was held on May 31, 2012, wherein Petitioners were granted shared legal custody and primary physical custody of the Child. (Pet. Ex. 2).
11. Father has not seen Child since August 24, 2011. Father's last telephone contact with Child was on May 29, 2014.
12. Father has not sent any cards or letters to the Child, nor has he sent gifts on her birthday or holidays.

13. Petitioners have had no changes of address or phone numbers since obtaining custody of Child.

14. Father has not provided any child support or financial assistance to Petitioners, nor has he made any inquiries as to Child's health or well-being.

15. Child calls Maternal Great-Aunt "Mamma" and Paternal Great-Uncle "Daddy."

16. Petitioners have established a parent/child relationship with Child and intend to adopt her so they can continue to financially and emotionally support her, as they have been doing since first obtaining custody of her.

### **Discussion**

Petitioners argue that the basis for termination in this case may be found in 23 Pa.C.S. §2511(a)(1) and (2), 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 **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).

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. 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).

"[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).

The Court finds as of the date of the Petition to Involuntary Terminate his parental rights, Father has failed to perform his parental duties for a period of time in excess of six (6) months.

A parent has an affirmative duty to be part of a child's life. Petitioners testified that Father's last in-person contact with the Child was on August 24, 2011. Child would have been 3 ½ years old at that time. Petitioners testified that Father's last contact by telephone was on May 29, 2014, nearly two years prior to the filing of the Petition. Father has not sent the Child cards or gifts on her birthday or holidays, has not paid any support for her, and has not even made inquiries into her health and well-being. Petitioners have not done anything to prevent Father from exercising his rights, privileges, or obligations as a parent to the Child. As they reside in the same home and maintain the same phone number they did at the time of Father's last contact with the Child, and at the time of the hearing at which they obtained primary physical custody of the Child, there have been no significant obstacles or roadblocks put in place by Petitioners which would have interfered with his ability to perform his parental duties.

While the Court must consider all the individual circumstances and explanations offered by the parent facing termination of his rights, in this case Father has offered none to consider, as he failed to appear for the hearing, just as he has failed to appear at all in his Child's life for the past several years. It

appears to this Court that Petitioners have established that Father has simply evidenced a settled purpose of relinquishing parental claim to the Child and has refused or failed to perform parental duties for a period in well in excess of six months. During that time, Petitioners have provided Child with support, love, guidance, and financial and emotional stability and have maintained a place of importance and consistency in her life.

As the statutory grounds for termination have been met, the Court must next 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)).

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, given that Child has not physically seen or interacted with Father in five years, and the fact that the last phone contact was more than two years ago, there is not a significant bond between Father and Child. Child knows Petitioners as her parents, calling them "Mamma" and "Daddy." Termination of Father's rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and Child. Child is bonded to Petitioners, evidenced by the fact that she has lived with them since she was three years old. It is evident to the Court that Petitioners love and care for Child as if she is their own. Petitioners have stepped in and assumed the parental responsibility that Father has evidenced a settled purpose of relinquishing.

The Court finds that Petitioners are very invested in Child's life and, together they provide Child with a safe and comfortable home, financial security, and the love and emotional support she deserves. The Court is satisfied that that termination of Father's parental rights and allowing the adoption of Child by Petitioners to proceed is in the best interest of the Child.

**Conclusions of Law**

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

2. The Court finds that JTC and PEC have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of AC will best be served by termination of PEC'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. 6489**  
:   
**AC,** :   
:   
**minor child,** :

**DECREE**

**AND NOW**, this 1<sup>st</sup> day of **September, 2016**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of PEC, held on August 24, 2016, it is hereby ORDERED and DECREED:

- (1) That the parental rights of PEC 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. 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