

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

**IN RE:** : **NO. 6395**  
:   
**AXH,** :   
:   
minor child, :   
:

**OPINION AND ORDER**

**AND NOW**, this 29<sup>th</sup> day of **January, 2016**, before the Court is a Petition for Involuntary Termination of Parental Rights filed on or about September 11, 2013, by Mother, AMH-C, in regard to the rights of her child, AXH. Mother seeks to terminate the parental rights of the child's biological father, RJW, as a prerequisite to having the child adopted by her husband, AC. A Hearing on the Petition was originally scheduled for March 3, 2013. The hearing was continued at the request of Father. A Motion to Dismiss the action was filed by Father on or about February 25, 2014. Father raised in his Motion to Dismiss issues of jurisdiction due to the Wyoming custody litigation. Wyoming thereafter declined jurisdiction. The Motion to Dismiss was denied by Order of March 21, 2014. The Hearing on the Petition for Involuntary Termination was again continued due to on-going litigation in the Wyoming Court. A hearing on the Petition for Involuntary Termination was finally held on October 1, 2015. By Order of October 8, 2015, the parties were directed to provide to the Court the docket of the Wyoming Court custody proceedings. Mother filed a Motion for Continued Hearing on October 9, 2015. Argument was heard on November 25, 2015 regard

Mother's Petition. By separate Order issued this date, the Court has denied Mother's request for continued hearing.

**Finding of Facts**

1. AXH was born on October 18, 2006, in Salt Lake City, Utah. He currently resides with his mother, AMH-C, step-father, AC, and step-sister at 219 Walnut Drive, Eighty-Four, Washington County, Pennsylvania. AMH-C and AC were married on June 5, 2009.

2. The child's father is RJW who was born on May 26, 1983. He is currently married to AW. RJW and AW were married on July 1, 2010.

3. Mother and Father resided in Sweetwater County, Wyoming, at the time of Child's birth. Mother and Father were separated at the time of Child's birth. Mother and Father divorced in April of 2007.

4. Mother had primary custody of Child from the time of his birth. Father had periods of partial custody on weekends.

5. Mother began residing with AC in March of 2007.

6. On October 15, 2010, there was an incident at Father's house, in which Father called Mother to come get Child. Father told Mother the police were at his home. There was an argument between Father and his Wife. Father was taken to jail as a result of the incident.

7. Mother enrolled the Child in counseling because of the incident.

8. Father did not visit in November, 2010; December, 2010; or January, 2011.

9. On January 14, 2011, the parties agreed Father would have three supervised custody visits prior to resuming any unsupervised periods of custody.

10. In the spring of 2011, Mother and Child relocated to Pennsylvania. The visitation center in Wyoming contacted Mother about Father's visits approximately one month after her move to Pennsylvania. Father made no requests for visitation prior to Mother's move to Pennsylvania.

11. Father contemplated filing a contempt action against Mother when he learned she had moved. Father did file a Petition with the Wyoming Court regarding custody in October, 2011.

12. Mother returned to Wyoming in February, 2012, for Father's supervised visits. Father completed two visits. From October of 2010 until February of 2012, Father had no physical contact with Child.

13. After Father's visits in February, 2012, Father contacted Mother on several occasions over a period of four to five months. Father did not contact Mother from October of 2012 until June of 2013.

14. In 2013, Father sent text messages every few months asking to see Child.

15. Mother stopped answering Father's text messages in 2014.

16. Father sent a birthday gift in 2013.

17. Since that time, Father has sent no cards, gifts, or necessities for Child.

18. Father asserts he sent Mother a text message every other month regarding seeing Child.

19. There was no documented action in the party's Wyoming custody matter from October of 2012 until October of 2013.

20. Child calls Step-Father "Dad". Step-Father has been involved with Child since he was two months old.

21. Child knows Father's identity.

### **Discussion**

Mother argues that 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 **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 finds Father has evidenced a settled purpose to relinquish his parental claim. Father did not contact Mother from October of 2012 until June of

2013. When Father did contact Mother, he simply asked when he could see the Child. He did not take any further Court action.

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).

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.

From approximately October of 2012 until June of 2013, Father has failed to show even a passive interest in his child. In the six months preceding the filing the Petition for Termination of Parental Rights, Father sent just a few text messages asking when he could see Child. A parent has an affirmative duty to be part of a child's life. Child was four years old when the incident occurred which caused Father to be arrested. Four years passed between that incident and the filing of the Petition for Termination of Parental Rights. During that time, Father only saw Child on two occasions. Father never attempted to visit Child in Pennsylvania. Father failed to use the Court system to ensure his relationship with the Child.

Father would have the Court blame Mother for his inaction. Mother did not move to Pennsylvania until approximately seven months after the October, 2010, incident. The parties had agreed to Father's supervised visitation in January of 2011. Father, at times, was represented by an attorney and aware of the process to enforce court orders. Father did not contact Mother at all from October of 2012 until June of 2013. It wasn't until after the filing of the Petition, that Father reported Mother stopped responding to his text messages.

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, Father does not have a bond with the child. The only father that the Child knows is his step-father. The last time Father saw the Child, or had any contact with the Child, was when the Child was five years old. Child is now ten years old. The child is aware of Father, but testimony evidenced no bond between the two. Further, termination of his rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and the Child. Child is bonded to Step-Father.

**Conclusions of Law**

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

2. The Court finds that AMH-C has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of AXH will best be served by termination of RJW's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

JRM/jan



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

**IN RE:** : **NO. 6395**  
:   
**AXH,** :   
:   
**a minor child,** :

**DECREE**

**AND NOW**, this **29<sup>th</sup>** day of **January, 2016**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of RJW, held on October 1, 2015, it is hereby ORDERED and DECREED:

- (1) That the parental rights of RJW 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

JRM/jan