

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

**IN RE:** : **NO. 6485**  
:   
**ARK,** :   
:   
minor child, :   
:

**OPINION AND ORDER**

**AND NOW**, this 10<sup>th</sup> day of **May, 2016**, before the Court is a Petition for Involuntary Termination of Parental Rights filed on December 2, 2015, by Mother, NK (“Mother”), in regard to the rights of her child, ARK (“Child”). Mother seeks to terminate the parental rights of the child’s biological father, BA (“Father”), as a prerequisite to having the child adopted by her paramour, CH (“Paramour”). A Hearing on the Petition was held on May 5, 2016, wherein Mother was present and represented by C. Rocco Rosamilia, III, Esquire, and Father was present and represented by Ravi Marfatia, Esquire.

**Finding of Facts**

1. ARK was born on November 19, 2013.
2. Child’s Mother is NK who was born on July 7, 1985. She currently resides at 124 Oak Street, Jersey Shore, Pennsylvania 17740, with her paramour CH and the Child.
3. Child’s Father is BA who was born on August 17, 1984. He has been incarcerated at SCI Rockview since February 19, 2016, on a parole violation detainer, which stemmed from new charges in 2015.

4. Father has a lengthy criminal record, dating back to 2003.
5. Father was incarcerated at the time of Child's birth and for the first nine months of Child's life.
6. During that time, Father sent Mother letters and inquired about Child. Father and Mother had approximately 3-4 phone calls per month.
7. Mother began dating Paramour while she was pregnant with the minor Child. Paramour was present at the hospital when Child was born.
8. Mother and Paramour began residing together in March of 2015.
9. Mother kept a detailed journal of the time Father spent with Child between September of 2014 and April of 2015 when he was not incarcerated.
10. From September of 2014 to December of 2014, visits were occurring 2 times per week at Father's grandmother's home. The visits were between 2 and 2 ½ hours each. Mother or her stepmother provided all the transportation to and from the visits.
11. In January of 2015, Mother indicated that she did not want to be solely responsible for the transportation. Father did not make arrangements to share in the transportation. Consequently, the visits decreased to 1 time per week.
12. Father never had an overnight visit with the Child.
13. Father never filed any formal custody actions with the Court.
14. Father began using heroin again in March of 2015. Father first became addicted to heroin in his senior year of high school. His criminal history, dating back to 2003, can be attributed to his drug addiction.

15. The last time Father physically saw Child was on April 5, 2015, when Mother took Child to an Easter egg hunt at paternal grandmother's home. Father did not interact with the Child as he was withdrawing from heroin and not feeling well.

16. During his most recent period of incarceration, Father has communicated with his grandmother, aunt, sister, and friend EP, by exchanging letters and via telephone calls.

17. Father sends between 4-8 letters per month. No letters have been sent to Mother or Child.

18. Father did not send birthday or Christmas cards or gifts to Child in 2015.

19. Father testified that he has not asked any of his relatives for Mother's home address or work address, despite knowing that Mother had taken Child to paternal grandmother's house 13 times while he was incarcerated, and that Father's relatives had been to Mother's new home in Jersey Shore, Pennsylvania.

20. Father did not write to Mother to request that she contact the prison superintendent to authorize her telephone number be added to Father's call list.

21. Mother visited Father at Clinton County Correctional Facility in December of 2015, with the intention of informing Father of her plans to file the Petition to Involuntarily Terminate his Parental Rights so that he would not be blindsided when it was received.

22. Both Mother and Paramour are employed full-time. Child is in daycare, and is progressing well, both socially and developmentally.

23. Child is in good health.

24. Child calls Paramour “Daddy” or “Dad.” Paramour has been involved with Child since she was born.

25. Mother testified that she is unsure of whether Child knows she has a father other than Paramour.

### **Discussion**

Mother argues 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.

(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.

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).

Where a parent is incarcerated, the fact of incarceration does not, in itself, provide grounds for the termination of parental rights. However, a parent's responsibilities are not tolled during incarceration. The focus is on whether the parent utilized resources available while in prison to maintain a relationship with his or her child. An incarcerated parent is expected to utilize all available resources to foster a continuing close relationship with his or her children.

**In re N. M. B.**, 2004 PA Super 311, P19 (Pa. Super. Ct. 2004) (internal 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.

A parent has an affirmative duty to be part of a child's life. When he was out of prison on probation/parole, Father failed to use the Court system to ensure his relationship with the Child, instead relying on Mother to arrange visits at Father's grandmother's house, and to shoulder the burden of transportation. When Mother decreased the visits to one time per week, Father made no effort to provide his own transportation in order to ensure additional time with his daughter.

From approximately April of 2015 until December of 2015 when the Petition was filed, Father's interest in the Child was limited to letters asking his relatives about her. Father did not attempt to communicate directly with Mother or Child, even though he knew Mother's cell phone number, where she worked, and that his relatives had spent considerable time with the Child while he was incarcerated. Father testified that because Mother's phone number was already on another inmate's call list, he could not add her to his list. This could have been remedied by writing to Mother and requesting that she contact the prison superintendent to allow her number to be added to Father's call list. Father never bothered to do that, assuming that because things were not on good terms with Mother, she would not authorize it. Father did not send any cards or gifts for Child's birthday or Christmas. Although he has been incarcerated with limited means, this Court finds that he has failed to even use the resources available to him in an attempt to foster a continuing relationship with his Child. While Father has been incarcerated, and even prior thereto, Mother and Paramour have been responsible for providing for Child's immediate physical and emotional needs. Although this Court does not doubt Father's love for Child, his conduct, or lack thereof, evidences a refusal or failure to perform his parental duties for a period in excess of six months and therefore we find that Mother has proven by clear and convincing evidence the requirements of 23 Pa.C.S. § 2511(a)(1).

With respect to 23 Pa.C.S. § 2511(a)(2), the relevant inquiry before the court is as follows:

In order to terminate parental rights pursuant to 23 Pa.C.S. §2511(a)(2), the following three elements must be met: (1) repeated 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). This Court has long recognized that "[p]arents are required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities." **In re A.L.D.**, 2002 PA Super 104, 797 A.2d 326, 337 (Pa. Super. 2002) (internal citation omitted). "[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.** at 340 (internal citation omitted).

Father testified that he has a history of drug abuse, dating back to his senior year of high school. He has a lengthy criminal record as a result of his addiction, and has served a period of incarceration for at least part of each year since 2003. Father testified that he loves Child more than anything, and that they have (had) a great bond. Although he feels his absenteeism is unfair to Child, he intends to forge a lasting bond with her if the Petition for Involuntary Termination is denied. However, this Court finds Father's sentiments to be too little, too late. Father was provided rehabilitative services through the Department of Corrections. He signed himself out of treatment because he indicated that people were selling drugs, and the environment in rehab was worse than on the street. Even when Father was most recently out of prison and having visits with Child,



interacting with her and seeing her grow was not enough for him to be able to get his drug addiction under control and stay clean. Father overdosed two times in public places, leading to new charges, which perpetuated the cycle of probation/parole violations and incarceration. This Court finds that Father has had multiple chances to remedy his drug abuse issues and has not been able to do so. This pattern of drug abuse and incarceration has left Child without the essential parental care, control or subsistence necessary for her physical or mental well-being. The Court finds that Mother has established by clear and convincing evidence that and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by Father.

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)). 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, given the Child’s young age, and the fact that Father has not seen or interacted with the Child in over a year, there is not a significant bond between Father and Child. Child knows Paramour as her father, calling him “Dad” or “Daddy.” Termination of Father’s 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 Paramour, evidenced by the fact that Paramour has been involved in her life from the time of her birth. Paramour treats Child as his own, cooking meals for her, playing with her, and often picking her up from daycare. Paramour has stepped in and assumed the

parental responsibility that Father's periods of incarceration and addiction have not allowed him to fulfill.

The Court notes that Mother and Paramour are not married, nor are they formally engaged. However, Mother and Paramour have been dating for nearly three years and have lived together for over a year. Both parties testified that they intend to get married in the future and expand their family together.

Paramour is very invested in Child's life and, together with Mother, provides Child with a safe and comfortable home, financial security, and the love and emotional support she deserves. The Court is satisfied that both Mother and Paramour understand the potential consequences of allowing Paramour to adopt Child, and that termination of Father's parental rights and allowing the adoption by Paramour to proceed is in the best interest of the Child.

**Conclusions of Law**

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

2. The Court finds that NK has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of ARK will best be served by termination of BA'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. 6485**  
:   
**ARK,** :   
:   
**minor child,** :   
:

**DECREE**

**AND NOW**, this 10<sup>th</sup> day of **May, 2016**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of BA, held on May 5, 2016, it is hereby ORDERED and DECREED:

- (1) That the parental rights of BA 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