

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

**IN RE:** : **NO. 6478**  
: :  
**ADOPTION OF JRO,** : :  
**minor child,** : :

**ORDER**

**AND NOW**, this 18<sup>th</sup> day of **March, 2016**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, CM (“Mother”) and Stepfather, MM (“Stepfather”), in regard to the rights of Mother’s child, JRO, on October 9, 2015. Mother seeks to terminate the parental rights of the child’s biological Father, RJO (“Father”), as a prerequisite to having the child adopted by her husband, MM. A hearing on the Petition was held on March 10, 2016, at which time Mother and her Husband were present with their counsel, Trisha D. Hoover, Esquire; Father was present with his counsel, Frank Santomauro, Esquire; and the Guardian Ad Litem, Angela Lovecchio, Esquire, was present on behalf of the child. The child, JRO, was also present but was not present during testimony. The Court conducted an *in camera* interview with JRO.

**Findings of Fact**

1. JRO was born on January 4, 2008, in Luzerne County, Pennsylvania. He currently resides with his Mother, CM, and Step-Father, MM, in Liberty, Lycoming County, Pennsylvania.

2. The child's mother is CM who was born May 12, 1988, and is currently 27 years of age. Mother married MM on May 8, 2015.
3. The child's father is RJO. Father is currently living in Scranton, Lackawanna County, Pennsylvania.
4. Mother and Father were married on January 25, 2007.
5. Mother and Father lived together in Texas, where Father, who was active duty military, was stationed.
6. Father deployed to Iraq in November, 2007, on a 15 month tour of duty, at which time Mother returned to Forty Fort, Luzerne County, Pennsylvania.
7. Father was granted leave and was present for the birth of JRO on January 4, 2008.
8. Mother, Father, and JRO spent approximately 24-25 days together after JRO's birth, at which time Father actively participated in JRO's life and fulfilled his parental obligations.
9. Upon Father's return from his first tour of duty, Mother and JRO moved to Texas, at which time there were no marital difficulties, and Father actively participated in JRO's life.
10. Mother and Father separated in the spring of 2009, and Mother returned with JRO to Pennsylvania, where she resided with her mother.
11. Both parties testified that whenever Father was home on leave he would exercise periods of custody, sometimes for extended periods of time, and that Mother made sure that Father had access to JRO.

12. Father was deployed for a second time in 2010 until approximately August of 2011. While he was overseas, the parties communicated via Skype and Father testified that he made it a point to call home 1-2 times per week to speak to JRO.

13. Upon Father's return from deployment, he was stationed in Texas and would talk to JRO 3-4 times per week via cell phone.

14. Father and Mother had a verbal agreement whereby Father would pay \$600 per month in child support.

15. Father returned to Scranton, Pennsylvania, towards the end of 2011. Mother was living in Covington, Pennsylvania, at the time and Father would contact Mother to exercise periods of custody. The parties would meet in Towanda, Pennsylvania, to facilitate the custody exchange.

16. A Protection from Abuse Order, containing custody provisions including that Mother's mother was to be the intermediary for purposes of contact and visits were to be supervised by Father's parents, was entered in Tioga County between the parties. Mother testified that she "broke" the Order so that Father could have access to JRO.

17. The PFA expired in the summer of 2012.

18. The last time Father had visited with JRO was over Christmas of 2011.

19. In February, 2012, Father received orders that he would be stationed in Hawaii.

20. Father testified that in April, 2012, he contacted Mother and asked her to move to Hawaii with JRO and that Mother declined.

21. In May or June of 2012, communication between the parties began to become strained.

22. In June or July of 2012, Mother contacted the military and informed them that Father was not paying child support. Consequently, the military determined that Father's support obligation was \$792 per month.

23. Following a nasty argument in June or July of 2012, regarding the child support, Mother and Father ceased communicating. Father stopped paying child support shortly thereafter.

24. Father previously sent money to his parents to purchase gifts and clothes for JRO but has not sent gifts or cards to JRO for Christmas or his birthday since 2012 or 2013.

25. Father's father and stepmother spent considerable time with JRO while Father was stationed in Hawaii. The last time they saw JRO was on December 31, 2012. Stepmother testified that following this visit, she was not able to locate Mother, and her calls and texts went unanswered.

26. The parties divorced in 2013. Father's attorney mailed the divorce papers to Mother's mother's residence due to not having a current address for Mother.

27. Mother did not send any photographs of JRO to Father while he was stationed in Hawaii. Father did not ask for any photographs to be sent to him.

28. Father returned from Hawaii to Scranton, Pennsylvania, in December, 2014.

29. Mother testified that she changed her cell phone number in November or December of 2014, and that she did not provide the new number to Father.

30. Father testified that he does not know Mother's current telephone number or address, and that he repeatedly attempted to contact her mother, but the line was busy or disconnected, and there was no voicemail.

31. Father ran into Mother's aunt in early 2015, and inquired about JRO and Mother. Mother's aunt told Father that Mother was back with her Mother. Father testified that, subsequent to this encounter, he would drive to Mansfield in hopes of seeing Mother and JRO, as that is where he believed Mother's mother lived.

32. No formal actions for custody or support have ever been filed by either Mother or Father in any county.

33. JRO refers to MM as "Dad." JRO understands that RJO is his biological father.

34. JRO has a close bond with MM.

35. When questioned by the Court, JRO indicated to the Court that he wanted to be adopted by MM and wanted his last name to be M because “they are a great family, never lie, and are responsible”.

36. When questioned by the Court, JRO indicated that he was not even curious about his Father and had very limited memories of him, other than he was in the military and “bosses people around”. The Guardian Ad Litem testified that when she spoke with JRO and asked him whether he had any dads in addition to Stepfather, that JRO teared up and said “he doesn’t want to see me”.

37. The Court has concerns that JRO was potentially “coached” prior to the *in camera* interview, and therefore declines to accord significant weight to his testimony or preferences.

### **Discussion**

Mother asserts that the grounds for termination of the Father’s parental rights may be found in 23 Pa.C.S. §2511(a)(1), which reads:

#### §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 evidence 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 §2511(a)(1) where a parent demonstrates a settled purpose of relinquishing parent claim to a child **or** fails to perform parental duties for at least six months prior to filing for the termination

petition. In the Interest of C.S., 761 A.2d 1197, 1201 (Pa. Super. Ct. 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. Ct. 2004), appeal denied, 872 A.2d 1200 (2005) citing In Re: D.J.S., 737 A.2d 283, 286 (Pa. Super. Ct. 1999).

In order to determine 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).

In In re T.L.G. and D.A.G., 505 A.2d 628 (Pa. Super. Ct. 1986), the Superior Court reversed the lower Court’s finding that father’s rights should be

involuntarily terminated, despite the fact that he had no contact with his children for eight months preceding the filing of the petition. The Court found that it was clear that the appellant attempted to maintain contact with his children, and that various conditions, including the inability of the parties to get along with each other and the distance (2,000 miles) between them, prevented the appellant from maintaining the amount and quality of contact that he sought. Id. at 630. The appellant did not have the appellee's most recent address and her telephone number was unlisted, preventing him from communicating with the children without appellee's consent. Id. The appellant had to stay informed about the children by contacting relatives of the appellee. Id. The Court found that the totality of the circumstances did not support a determination that appellant had exhibited such a failure to perform his parental duties as would justify the involuntary termination of his parental rights. Id. at 631.

The facts of In re T.L.G. and D.A.G. are similar to the case before the Court. It is undisputed that Father was an active participant in the first few years of JRO's life. While his active military service may have prevented him from having day-to-day contact with JRO, he readily exercised periods of custody - some for extended lengths of time - when he was home on leave, and the parties communicated regularly via telephone and Skype while he was deployed overseas. Mother never prevented Father's access to JRO, including when there was a Protection from Abuse Order entered between the parties. Mother permitted Father's family to have periods of custody/visitation with JRO when



Father was deployed or stationed in Texas and Hawaii. Father sent cards, gifts, and money for JRO's basic necessities and, for a time, voluntarily paid Mother child support although no formal agreement was in place.

Both parties testified that Mother moved frequently during the course of JRO's life. Mother lived at multiple addresses, sometimes on her own and sometimes with her mother, in 3 or 4 different counties since returning to Pennsylvania from Texas. Mother herself had trouble remembering where she lived when various events occurred. Additionally, Mother testified that she last changed her cell phone number in November or December of 2014, and that Father does not have the most recent number, nor does he know her current address. Only Mother's current city and county was included in the Petition for Involuntary Termination of Parental Rights. While Mother testified that her mother has had the same cell phone number for the past 10 years, Father testified that he repeatedly attempted to call her to inquire about JRO and discern Mother's whereabouts, but received no return calls. Similarly, Father testified that he attempted to contact Mother at her last known number at least 8 or 9 times in 2014. Neither party offered phone records as exhibits to prove whether these attempts of Father did or did not occur.

Although Father has not had any recent contact with JRO, and has failed to use the Court system to ensure his relationship with his child, this Court finds that Mother, whether intentionally or not, has placed significant obstacles in the way of Father performing his parental obligations and exercising his parental

rights. Mother had several changes of residence and telephone numbers, none of which were provided to Father, thereby significantly hindering Father's ability to maintain the place of importance in JRO's life that he occupied prior to Mother's decision to cease communication with Father and his family. Mother abruptly cut off contact with Father and Father's family, despite the fact that both Father and his family spent significant periods of time with JRO during the early years of his life. The Court is cognizant of the fact that parental duty "requires that the parent act affirmatively with good faith interest and effort, and not yield to every problem, in order to maintain the parent-child relationship to the best of his or her ability, even in difficult circumstances". In re: B.N.M., 856 A.2d 847, 855 (Pa. Super. Ct. 2004)(citations omitted). A parent "must utilize all available resources to preserve the parental relationship, and must exercise reasonable firmness in resisting obstacles placed in the path of maintaining the parent-child relationship." Id. citing In re C.M.S., 832 A.2d 457, 462 (Pa. Super. Ct. 2003). Father testified that he attempted to contact Mother and her relatives to no avail. Following an encounter with Mother's aunt, in which she indicated that Mother was "back with her mother," Father would drive to Mansfield, Pennsylvania, in an effort to locate the child. Father indicated he was unable to afford a private investigator to help him find Mother and JRO, and he was precluded from filing a custody action because he was unaware of Mother's address, or even the county in which she resided, for filing and service.

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)). After hearing the testimony of the parties and the witnesses, the Court does not find that Mother has proven by clear and convincing evidence that Father evidenced a settled purpose of relinquishing his parental claim to JRO. Furthermore, in considering the totality of the circumstances, including the explanations offered by Father for his periods of no contact with the child, the Court declines to find that Father willfully failed or refused to perform his parental duties.

### **Conclusions of Law**

1. The Court finds that CM has not established by clear and convincing evidence that the parental rights of RJO should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that because CM has not established by clear and convincing evidence that the parental rights of RJO should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1), an inquiry pursuant to 23 Pa.C.S. §2511(b) into whether the developmental, physical and emotional needs and welfare of JRO will best be served by termination of parental rights is unnecessary.

Accordingly, the Court will enter the attached Order.

By the Court,

Joy Reynolds McCoy, Judge

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

**IN RE:** : **NO. 6478**  
:   
**ADOPTION OF JRO,** :   
**minor child,** :

**ORDER**

**AND NOW**, this 18<sup>th</sup> day of **March, 2016**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of RJO held on March 10, 2016, it is hereby ORDERED and DECREED:

- (1) That the Petition for Involuntary Termination of Parental Rights filed on October 9, 2015, is DENIED;
- (2) That the Petition for Adoption filed on October 2, 2015, is hereby DISMISSED.

By the Court,

Joy Reynolds McCoy, Judge