

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

<b>IN RE ADOPTION OF:</b>	:	<b>NO. 6641</b>
	:	
<b>L.N.I.L.,</b>	:	
<b>minor child</b>	:	

**OPINION AND ORDER**

**AND NOW**, this 3<sup>rd</sup> day of **January, 2020**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by mother, HW (“Mother”), and her husband, RW (“Stepfather”), on May 3, 2019. Said petition is with regard to the rights of HW’s child, LNIL (“Child”), born August 2, 2010. Mother and Stepfather seek to terminate the parental rights of the child’s biological father, EL (“Father”), as a prerequisite to having the child adopted by Stepfather. A pre-trial conference on the Petition was held on June 7, 2019, at which time the Petitioners were present and represented by John Smay, Esquire. Following the pre-trial conference, a hearing on the Petition was scheduled for August 19, 2019. As EL indicated at that time that he wished to contest the termination of his parental rights, an Order was docketed on August 22, 2019, appointing Dance Drier, Esquire, as counsel for him. Trisha Hoover Japer, Esquire, was appointed as counsel for the child. A hearing on the Petition for Involuntary Termination of Parental Rights was held on November 20, 2019. HW and RW appeared with their counsel, John Smay, Esquire. EL appeared and was represented by Dance Drier, Esquire. Trisha Hoover Jasper, Esquire, appeared on behalf of the child.

**Discussion**

Mother and Stepfather argue that the basis for termination of parental rights in this case may be found in 23 Pa.C.S. §2511(a)(1) and (a)(2), which provide 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). When determining whether to terminate the rights of a parent, 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).

Father filed a Complaint for Custody on January 13, 2012, in Lycoming County at docket #12-20,074. At the time of a custody conference on February 29, 2012, the parties reached an agreement regarding physical custody of the Child which was dependent on Father's work schedule. The Order was modified by agreement of the parties on September 30, 2013, which granted Father partial physical custody every other weekend, every Wednesday overnight, and every other Monday for a period of 3 hours. Venue for the custody action was transferred to Montour County in 2013 and to Union County in 2016. The Court was not provided with a copy of the current custody order.

Father testified that prior to 2017 he worked in the oil and gas industry, which caused him to frequently be away from home and, consequently, miss his periods of physical custody, but that he and Mother were always good at working together and co-parenting. When Father would be unavailable to exercise his periods of physical custody, he would keep in touch with the Child via phone calls and Facetime, and Mother would permit him to make up the time he missed. Prior to 2017, Mother and Stepfather encouraged Father to maintain a relationship with the Child, even inviting him to their home to watch her open Christmas presents and offering to provide him with gas money to cover his transportation costs to see the Child.

Father testified that in 2017 he was battling substance abuse issues. This led him to lose his license in 2018, which eventually led to him losing his job. Around this time, the co-parenting relationship between Father and Mother began to deteriorate. Father testified that although there was nothing more important than his daughter, it was a time of extreme instability in his life, due to the fact that he was unemployed and essentially homeless. Mother testified that she was aware that Father was going through a difficult

time but that she encouraged him to continue to call and visit, because that was what the Child wanted. However, Mother testified that Father would go for extended periods of time without seeing the Child, or contacting her by phone or Facetime, and when he did communicate with her he would often promise to attend her events such as soccer games and then fail to attend, leaving the Child hurt and disappointed. Mother testified that this happened so frequently that she eventually requested Father just show up and “surprise” the Child rather than tell her his plans so that she would not get her hopes up and be disappointed if he failed to follow through. (Ex. P12).

One particularly disappointing event occurred in 2017, when the Child had the opportunity to attend a “daddy/daughter” dance. Mother texted Father a copy of the invitation and Father replied that he “wouldn’t miss it for the world.” (Ex. P2). Stepfather, who also attended the dance with the Child, called Mother 45 minutes after the event started to inform her that Father had failed to attend and that the Child was distraught and wanted to leave. Although Father testified that he spoke with the Child after he failed to attend her dance and he told her he regretted not going, Mother testified that she had to console the crying Child who was obviously deeply affected by Father’s lack of follow-through. The effects of Father’s absence carried over to the following year when the Child refused to attend the dance. In 2019, the Child asked only Stepfather to accompany her to the dance, presumably to avoid the potential of being disappointed again by Father.

Father acknowledged in text messages to Mother in both January of 2017 and October of 2018 that he had been struggling and had gone too long without contacting the Child. (Ex. P10 and Ex. P5). In October of 2018 he informed Mother that he had stayed away in order to work on himself to enable him to be a better parent to the Child.

While this Court commends Father for taking steps necessary to turn his life around, it is well settled that "parental 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).

A parent has an affirmative duty to be involved in a child's life. 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).

Father last saw the Child in July of 2018. For at least a year prior to their last physical contact, Father performed absolutely no parental duties for the Child other than paying child support. Although it does appear that Father sporadically attempted to contact Mother to inquire about the Child and request to exercise some periods of physical custody, his efforts were minimal. Father testified that Mother had not allowed Father to have contact with the Child since October of 2018, but Father also admitted his phone

was out of service for approximately 4 months last year. Father made no attempts to go to Mother and Child's house to establish communication because he felt like he was not welcome. Father failed to use the court system to enforce his custodial rights to the Child. He first explained that he avoided filing a petition for contempt or modification of the custody order because he and Mother had always been able to come to agreements outside of court. He later explained that he believed he needed to be represented by an attorney to utilize the court system.

For approximately two years prior to the filing of the Petition for Involuntary Termination of Parental Rights, Father did not attend any parent/teacher conferences, doctor appointments, or soccer games for the Child. He did not write her letters, or send her cards or gifts for her birthday or Christmas. The Court finds that Father's own personal struggles do not excuse his lengthy periods of absence from the Child's life. Father utterly neglected to fulfill his affirmative duty to provide love, protection, guidance, and support to the Child. Father failed to utilize all available resources to preserve the parental relationship. Father simply did not do enough to "exert himself to take and maintain a place of importance in the child's life." Id.

This Court is satisfied that Mother and Stepfather have proven by clear and convincing evidence that Father has failed to perform parental duties for a period in excess of 6 months immediately preceding the filing of the Petition for Involuntary Termination of Parental Rights pursuant to 23 Pa.C.S. §2511(a)(1). As only one subsection of 23 Pa.C.S. §2511(a) must be established by clear and convincing evidence in order to proceed to an analysis under 23 Pa.C.S. §2511(b), and the Court has found that the statutory grounds for termination have been met pursuant to 23

Pa.C.S. §2511(a)(1), the Court will not address the averments that termination is also warranted under 23 Pa.C.S. §2511(a)(2).

Having found that 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).

This Court has some concerns about Mother's interpretation of - and motivation for - pursuing termination of Father's parental rights. Mother herself testified that the Child *does* want to see and talk to Father and wants to know where he's been, but in her opinion what had been a great bond has been damaged by Father's lack of commitment and consistency. Mother indicated that she always wanted Father to be involved but as the months passed without any contact from Father she began to worry about what would happen to the Child should something happen to herself. Mother discussed with the Child the subject of termination of Father's parental rights, and told her "termination" meant "the law would allow Mother and Stepfather to make the decisions and that Father wouldn't be allowed to see the Child unless Mother and Stepfather felt he was in a good place." Trisha Hoover Jasper, Esquire, counsel for the Child confirmed that Mother told the Child "if Dad is in a good place, we will let him see you." Mother testified that when the Child asked what would happen if something would happen to Mother, she responded with "as it stands now she would go live with her dad." Mother stated this caused the Child to look at her with fear, "not because she's afraid of Father but because that's not what she wants." Attorney Jasper testified that the Child wants to be adopted because she does not want to have to move out of her house, change soccer teams, change schools, etc. She reported that the Child wants to be adopted but wants to see Father "a lot," and wants a regular custody schedule.

Given the age of the Child and the explanation provided for the reasons Mother and Stepfather are pursuing termination of Father's parental rights, it is understandable that the Child believes that adoption is in her best interest. It is evident to this Court that Child is clearly bonded to Stepfather, who has been a prominent figure in her life since 2014. It is clear that Stepfather loves and cares for Child and treats her as his own.



However, the testimony of the parties and witnesses, coupled with the opinion of counsel for the Child, is sufficient for the Court to conclude that a bond still exists between Father and Child, and although the Child considers Stepfather as a father-figure, it is clear that she also loves Father and wishes to maintain a relationship with him.

It is undisputed that the Child has stability in her life right now at the home of Mother and Stepfather. That stability will not be threatened if the Court declines to terminate Father's rights, as Stepfather would continue to meet the Child's emotional and financial needs and would continue to play an active role in her life. The Child having a relationship with Father would not preclude Stepfather from continuing to have a relationship with the Child. As the Child has expressed - to both Mother and her counsel - that she wants to have a relationship with Father, the Court feels that termination of Father's parental rights would not best serve her developmental, physical and emotional needs and welfare. Terminating Father's parental rights and allowing Mother and Stepfather to determine whether Father is in a "good enough" place for Father to see the Child would destroy the bond that clearly exists between the Child and Father. The Court has carefully considered all the evidence presented, including the opinion of counsel for the Child who argued that because the Child still desires to have a relationship with Father, she must advocate for the denial of the petition. This Court finds that there is a bond between the Child and Father, and that the matter is more appropriate for a custody court to determine the extent of contact that would be in the Child's best interest than for this Court to terminate Father's parental rights altogether.

**Conclusions of Law**

1. The Court finds that HW and RW have established by clear and convincing evidence that grounds exist for involuntary termination of EL's parental rights to LNIL pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that HW and RW have failed to establish by clear and convincing evidence that the developmental, physical and emotional needs and welfare of LNIL will best be served by termination of EL's parental rights.

Accordingly, the Petition for Involuntary Termination of Parental Rights is hereby **DENIED.**

By the Court,

Joy Reynolds McCoy, Judge