



### **Findings of Facts**

1. AH was born on November 21, 2007.
2. The child's Mother is SH.
3. The child's Father is RP who is currently incarcerated in the Northumberland County Prison and whose paternity was established through an acknowledgement of paternity.
4. The child currently resides with her Mother as well as Mother's fiancé, JD, in Williamsport, Lycoming County, Pennsylvania.
5. Mother and Father were unmarried at the time of the child's birth and have no ongoing relationship.
6. Father has had three visits with the child over her lifetime:
  - a. December 2007: Mother brought the child to Father's residence for a visit that lasted approximately one hour with Mother's presence.
  - b. October 2019: Father had contact with the child for approximately an hour and half without Mother's consent or knowledge.
  - c. October 2019: Father had contact with the child for approximately thirty minutes while attending a school lunch with the child and her grandmother and without Mother's consent or knowledge.
7. Father has had no other contact with the child. He has never attended a birthday party, sent a birthday card or gift, or called the child.
8. Father has never attended any of the child's doctors' appointments or made any inquiries to Mother regarding the health or wellbeing of the child.
9. The child does not know who Father is, has no bond with him, and is afraid of him.

10. Mother and Mother's fiancé have one child together, age six, and have been together for eight years.
11. Mother's fiancé has provided the physical and emotions needs of the child for those eight years and the child refers to Mother's fiancé as "dad" or "daddy."
12. Father filed a Petition for Emergency Custody and for Custody on October 14, 2019 which was denied.
13. The child's maternal grandparents filed a Petition for Custody which was withdrawn.

The Court's findings of facts as set forth above have been stipulated to by the parties on record. Attorney Jasper and Attorney Kase agree that the termination of Father's parental rights is in the best interest of the child.

### **Discussion**

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).

Other than two short visits in October of 2019, Father has made no attempt to be involved in the child's life and has provided no means of support, either financially or emotionally, to the child throughout the child's life. Therefore, 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.

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, the child has no relationship with Father at all. He has established no bond with her and, to the contrary, the child is afraid of Father.

Therefore, termination of Father's parental rights and allowing the adoption by Mother's Fiancé to proceed is in the best interest of the Child.

**Conclusions of Law**

1. The Court finds that Petitioners have established by clear and convincing evidence that RP, by conduct continuing for a period of at least six months immediately preceding the filing of the petition has failed to perform parental duties pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that the Agency has established by clear and convincing evidence that no bond exists between RP and the Child and that the developmental, physical and emotional needs and welfare of the Child will be best served by the termination of his parental rights pursuant to 23 Pa.C.S. §2511(b).

Accordingly, the Court will enter the attached Decree.

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: Bradley Hillman, Esquire.  
Dance Drier, Esquire  
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Tiffani Kase, Esquire  
Jerri Rook  
Gary Weber, Esquire



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 Human Services  
Pennsylvania Adoption Information Registry  
P.O. Box 4379  
Harrisburg, PA 17105-17111  
Telephone: 1-800-227-0225

Medical history information forms may also be obtained locally by contacting one of the following agencies:

1. County 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)

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