

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

**IN RE:** : **NO. 2021-6734**  
:   
**NR,** :   
:   
**Minor child** :   
:

**OPINION AND ORDER**

**AND NOW**, this 3<sup>rd</sup> day of **May, 2021**, before the Court is Lycoming County Children & Youth Services' ("Agency") Petition for Involuntary Termination of Parental Rights of AR ("Mother") and JB ("Father") filed on February 12, 2021, with regard to NR ("Child"). A hearing on the Petition for Involuntary Termination of Parental Rights was held on April 30, 2021. By Order docketed February 24, 2021, this Court granted the Agency's Petition to Approve Publication of Notice. Accordingly, notice of the time, date, and location of the hearing on the Petition for Involuntary Termination of Parental Rights was published in the Lock Haven Express on March 26, 2021 (Ex. 11, 14), in the Williamsport Sun-Gazette on March 26, 2021 (Ex. 12, 15), and in the Lycoming Reporter on April 2, 2021 (Ex. 13, 16). John Pietrovito, Esquire, Solicitor for the Agency, and Angela Lovecchio, Esquire, counsel for the Child, were present at the hearing. Howard Gold, Esquire, Mother's appointed counsel, and Trisha Hoover Jasper, Esquire, Father's appointed counsel, were also present at the hearing. After indicating to the Court that they had no contact from Mother and Father over the duration of the case, despite repeated attempts by telephone and mail, Attorneys Gold and Jasper were excused from the hearing.

### **Findings of Facts**

NR was born on July 23, 2020. He is the child of AR, date of birth January 8, 1994, and JB, date of birth May 13, 1966. Mother and Father were not married at the time of the Child's birth.

The Agency became involved on July 24, 2020, when it received a report that, at the time of the Child's birth, Mother tested positive for marijuana and buprenorphine, and had admitted to using crack cocaine during her pregnancy. The Agency was further notified that Mother had left the hospital against medical advice. On July 27, 2020, the Child was discharged from the hospital. At the time, Mother was living with her father, GR. On this date, the Agency made an unannounced home visit, at which time they were informed by GR that Mother was out "showing off the baby." The Agency caseworker left her card and requested that Mother contact her when she returned.

When she did not hear from Mother, the Agency caseworker returned to the home on July 28, 2020. Again, Mother was not present. The Child was being cared for by GR, and the caseworker had to prompt him how to hold, feed, and care for the Child. After forty-five minutes, Mother returned to the home and it was discovered that Mother had only one pre-made bottle in the home to feed the Child. The Agency assisted Mother by purchasing additional formula for the Child. Mother requested the caseworker purchase pre-made bottles as she was not sure how to make up the bottles using powdered formula.

The Child had a doctor appointment on July 29, 2020, after which Mother reported that he was diagnosed with thrush and given prescription medication to treat it. A follow-up appointment was scheduled for July 31, 2020, due to showing signs of drug withdrawal and having a substantial diaper rash. Mother failed to take the Child to the

follow-up appointment, opting instead to take him to the emergency room on July 31, 2020. Mother had run out of the medication prescribed for thrush in 2 days, and the emergency room pharmacy declined to refill the prescription.

The Agency caseworker made another home visit on August 3, 2020, and observed the Child's thrush was getting worse. The caseworker made an appointment for the Child to be examined by a doctor on August 4, 2020, and transported Mother and Child to said appointment. At the appointment, the doctor expressed concern that Mother had improperly administered the Child's medication for thrush. There was also concern regarding the Child's lack of weight gain since birth. Following the medical appointment, the Agency sought and was granted emergency custody of the Child. The Child was placed in Kinship Care.

A shelter care hearing was held on August 7, 2020, at which time sufficient evidence was presented to prove that return of the Child to Mother or Father was not in the Child's best interest. Mother did attend and was drug tested prior to the hearing. The result were positive for THC, amphetamine, methamphetamine, and suboxone. The Juvenile Court Hearing Officer noted in her Order that Mother appeared to have difficulty focusing on the proceedings. Legal and Physical custody of the Child was to remain with the Agency with continued placement in Kinship Care.

A Dependency Petition was filed on August 10, 2020, alleging that the Child was without proper parental care or control necessary for his physical, mental, and emotional health. A Motion for Finding of Aggravated Circumstances was filed on August 13, 2020, alleging that Mother's parental rights with regard to other children were previously involuntarily terminated within three years immediately preceding the date of birth of the Child. Additionally, the Motion alleged, with respect to both parents,

that another child of theirs had been the victim of sexual violence where Father was named as the perpetrator of abuse. A hearing was held on August 17, 2020, after which the Court found that clear and convincing evidence existed to substantiate the allegations set forth in the Petition. Neither parent attended the hearing. The Court found that allowing the Child to remain in Mother's and Father's home would be contrary to his welfare. The Court ordered legal and physical custody of the Child remain with the Agency with continued placement in Kinship Care.

On August 31, 2020, the Agency filed a Petition for Permanency Review and Change of Goal as well as a Motion to Suspend Visitation, alleging that neither parent had contacted the Agency to initiate visitation with the Child since he was placed in Agency custody. The Agency requested that the goal be changed from Reunification to Adoption. A permanency review hearing was held on September 15, 2020. Neither Mother nor Father attended the hearing. The Court noted that there had been no compliance by either Mother or Father with the permanency plan, in that neither of them had initiated visits with the Child or made any attempts to address drug or alcohol concerns. The Court further found that there had been no progress towards alleviating the circumstances which necessitated the Child's placement. Accordingly, the Court ordered that legal and physical custody of the Child remain with the Agency with continued placement in Kinship Care.

A permanency review hearing was held on December 29, 2020. Neither Mother nor Father attended the hearing. Again, the Court found that there had been no compliance with the permanency plan, in that neither Mother nor Father had any contact with the Agency during the review period, nor had they taken any steps to initiate any services to manage mental health concerns or address any drug and alcohol concerns

and, as such, no progress had been made to alleviate the conditions which necessitated the Child's placement. Accordingly, the Court ordered that legal and physical custody of the Child remain with the Agency with continued placement in Kinship Care.

On February 12, 2021, the Agency filed the Petition for Involuntary Termination of Parental Rights. A pre-trial conference was held on February 22, 2021. Angela Lovecchio, Esquire, was appointed as legal counsel for the Child. A hearing on the Petition was scheduled for, and did occur, on April 30, 2021.

### **Discussion**

The Agency argues that the basis for termination in this case may be found in 23 Pa.C.S. §2511(a)(1), (2), and (5), 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.
- (5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

In order to involuntarily terminate parental rights, the Agency must prove by clear and convincing evidence one of the above subsections of 23 Pa.C.S.A. §2511(a).

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) (emphasis added). 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, 872 A.2d 1200 (Pa. 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 that Mother and Father have evidenced both a settled purpose of relinquishing parental claim to the Child and have failed to perform their parental duties from the date of the Child's birth, approximately seven months prior to the filing of the Petition for Involuntary Termination of Parental Rights. There was no testimony regarding whether Father had ever had contact with the Child, or had performed any parental duties whatsoever. Mother's contact with the Child consisted of approximately 12 days between his birth and the date on which he was placed in Agency care. During that short window, there were numerous areas of concern regarding Mother's willingness and ability to perform parental duties on behalf of the Child, including her failure to properly administer medication, make and keep important medical appointments, and ensure that there was adequate formula available to promote healthy weight gain.

A parent has an affirmative duty to be part of a child's life; Mother and Father have clearly not met this affirmative duty. Neither Mother nor Father have shown even a passive interest in the Child. Mother was referred for services through the Outreach program with goals of parenting and housing. Barbie Barnes, Outreach caseworker, testified that upon their first meeting, she added drug and alcohol rehabilitation to the list of goals. Despite Ms. Barnes making several attempts to contact Mother afterwards, Mother did not respond and eventually her case was closed due to her failure to cooperate. It was recommended that Father also participate in Outreach services but he refused the referral. At each permanency review hearing, the Court heard testimony

that neither Mother nor Father had any contact with the Agency. Specifically, there were no requests to initiate visits with the Child or any inquiries about his health and well-being. Since being placed in the Agency's custody, neither Mother nor Father has performed even the most basic of parental duties such as attending a doctor's appointment, giving the Child a bath, feeding him, or comforting him when he was sick.

This Court further finds that the Agency has clearly established that Mother and Father have evidenced a settled purpose of relinquishing parental claim to the Child. This settled purpose of relinquishment is especially apparent given the fact that, despite repeated attempts to contact them by the Agency and their appointed counsel, Mother attended only one court proceeding involving the Child and Father attended none.

As the Court has found that statutory grounds for termination have been met under subsections of 23 Pa. C.S.A. §2511(a)(1), and only one subsection is required to be met in order to move on to the analysis under subsection (b), this Court will not address the remaining subsections alleged in the Agency's Petition to Involuntarily Terminate Parental Rights. The Court must now 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 (Pa. Super. 2002).

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 Court feels strongly that there is no bond between the Child and either Mother or Father. The Child was removed from the care of Mother and Father when he was less than 2 weeks old. Given his age at the time of his placement in Kinship Care - which was the last time he had contact with either parent - and the length of time since he has seen Mother and Father, it is clear that there was inadequate time to develop a necessary and beneficial bond.

The Child is currently in the home of SD, the woman who adopted his siblings and she testified that the Child is very bonded with his siblings. Furthermore, he is bonded with SD, who has performed all parental duties and met all his physical and emotional needs since August 4, 2020. The Child is currently in a loving and stable home, and SD is willing to offer him permanency. The Court is satisfied that termination of Mather’s and Father’s parental rights would not destroy an existing bond and that

permanency in the form of adoption is in the best interest of the Child.

**Conclusions of Law**

1. The Court finds that the Agency has established by clear and convincing evidence that AR, 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 JB, 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).

3. The Court finds that the Agency has established by clear and convincing evidence that no bond exists between AR 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).

4. The Court finds that the Agency has established by clear and convincing evidence that no bond exists between JB 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,

Joy Reynolds McCoy, Judge

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

**IN RE:** : **NO. 2021-6734**  
:   
**NR,** :   
:   
**Minor child** :

**DECREE**

**AND NOW**, this 3<sup>rd</sup> day of **May, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of AR, held on April 30, 2021, it is hereby ORDERED and DECREED:

- (1) That the parental rights of AR 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 mother.

**NOTICE TO NATURAL PARENT**

**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 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)

By the Court,

Joy Reynolds McCoy, Judge

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**DECREE**

**AND NOW**, this 3<sup>rd</sup> day of **May, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JB, held on April 30, 2021, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JB 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 PARENT**

**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.

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By the Court,

Joy Reynolds McCoy, Judge