

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

**IN RE:** : **NO. AD-2021-6774**  
:   
**IH and** :   
**TH,** :   
:   
: **minor children** :   
:   
:

**OPINION AND ORDER**

**AND NOW**, this 24<sup>th</sup> day of **June, 2022**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Father, SH, and his wife, LD, on November 10, 2021. Said petition is with regard to the rights to SH;s children, IH, born [redacted], and TH, born [redacted]. Father and his wife seek to terminate the parental rights of the children's biological mother, KO, as a prerequisite to having the children adopted by Father's wife. A pre-hearing conference on the Petition was held on December 22, 2001. Mother appeared at the pre-hearing conference and indicated that she wished to contest the termination of her parental rights. Jessica Feese, Esquire, of the Lycoming County Public Defender's Office, was appointed as counsel for Mother. Patricia Shipman, Esquire, was appointed as counsel for the children. A hearing on the Petition to Involuntarily Terminate Mother's Parental Rights was held on June 22, 2022. SH and LD appeared and were unrepresented. KO appeared and was represented by Larkin Hayman, Esquire, of the Lycoming County Public Defender's Office. Jennifer Ayers, Esquire, appeared on behalf of her law partner, Patricia Shipman, Esquire as counsel for IH and TH.

**Finding of Facts**

1. IH was born [redacted], and TH was born on [redacted] (“Children”). The Children currently reside with their father, SH (“Father”) and Father’s wife, LD (“Stepmother”) at [redacted]. Father and Stepmother have been married since October 10, 2020.

2. The Children’s biological Mother is KO (“Mother”). Mother resides at [redacted].

3. Mother and Father were unmarried at the time of IH’s birth, but were married prior to the time of TH’s birth.

4. Mother and Father separated and on April 27, 2009, a custody Order was entered by agreement of the parties in Union County at docket #[redacted].

5. The custody Order granted Mother and Father shared legal custody. Father was granted primary physical custody, and Mother was granted periods of custody every other weekend from 5:00 p.m. on Friday until 7:00 p.m. on Sunday, and every Wednesday from 5:00 p.m. until 7:00 p.m. Mother’s periods of custody were to be exercised at the home of her father.

6. From 2009-2019, Mother was inconsistent in exercising her periods of court-ordered custody. For a period of time when Mother lived in Ohio, she did not see the Children at all.

7. On Mother’s weekends, she would text Father to inquire “are the girls coming?” If Father replied “no,” she did not force them to come.

8. Mother stopped contacting the Children after they indicated they wanted nothing to do with her.

9. The last time Mother exercised her periods of custody with IH was in March/April of 2020, and the last time Mother exercised her periods of custody with TH was in February of 2021.

10. Mother mailed a card to TH in December of 2021, for her birthday. The card was marked "return to sender" by the Children. Mother has provided no other cards or gifts for the Children for their birthdays or holidays.

11. There is a child support order in place in Union County. Mother's payments are inconsistent.

12. Mother has never filed a Petition for Contempt or a Petition for Modification of the Custody Order to enforce her custodial rights.

13. Both Children have IEPs. Mother is listed as a contact on the Children's school information but she has never participated in an IEP meeting or a parent-teacher conference.

14. Mother is listed as a contact with the Children's medical providers but she has never attended an appointment. Father, and recently, Stepmother, take the Children to all their appointments.

15. Father's, Stepmother's, and IH's phone numbers have been the same since 2019.

16. The Children told Father they were worried that they would have to return to Mother's if something were to happen to him.

17. The Children refer to Stepmother as "Mama Lou." They have a very close relationship.

18. Stepmother desires to proceed with adopting the Children if the Petition for Involuntary Termination of Mother's Parental Rights is granted.

## **Discussion**

In cases of termination of parental rights, the burden of proof is on the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so. **In re Adoption of A.C.H.**, 803 A.2d 224, 228 (Pa. Super.2002). The standard of clear and convincing evidence means 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 J.D.W.M.**, 810 A.2d 688, 690 (Pa.Super.2002). Father and Stepmother argue that the basis for termination in this case may be found in 23 Pa.C.S. §2511(a)(1), which provides as follows:

### §2511. Grounds for Involuntary Termination

(a) GENERAL RULE.--The rights of a parent in regard to a children 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 children or has refused or failed to perform parental duties.

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 orphans' court must then consider the parent's explanation for his or her abandonment of the child, in addition to any post-abandonment contact. **In re Adoption of C.J.A.**, 204 A.3d 496, 503 (Pa. Super. 2019).

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).

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 children. A children needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the children. 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 children and a genuine effort to maintain communication and association with the children. Because a children needs more than a benefactor, parental duty requires that a parent "exert himself to take and maintain a place of importance in the children'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 as of the date of the filing of the Petition for Involuntary Termination of Parental Rights, Mother has evidenced both a settled purpose of relinquishing parental claim to the Children and has failed to perform her parental duties for a period well in excess of six (6) months.

A parent has an affirmative duty maintain a place of importance in a child's life and Mother has clearly not met this affirmative duty. Since separating from Father when the Children were two years old and six months old, Mother has shown – at

most - a passive interest in the Children for most of the Children's life. In 2009, Mother entered into a custody agreement which was made an Order of Court. Mother was granted periods of physical custody every other weekend and every Wednesday evening. Mother was never consistent in exercising her periods of custody but appears to blame Stepmother's entry into the Children's lives for the fact that she has not exercised her custodial rights with regard to one of the Children since March or April of 2020 and since February of 2021 with regard to the other. Both Mother and Father testified that on Mother's weekends, she would text Father to ask if the Children "were coming." Both parties also testified that the Children wanted nothing to do with Mother so Father's response to Mother's inquiries was often "no." Instead of filing a Petition for Contempt to enforce her custodial rights, or a Petition for Modification of the Custody Order, Mother chose to accept the Children's decisions. Mother's explanation for doing so was that she and Father made a decision when the Children were very young that they would not force the Children to do anything they did not want to do. Mother also testified that she did not utilize the court system to enforce her custodial rights because she did not want Father to go to jail.

As a result of her decision not to enforce her custodial rights, Mother has failed to perform any basic parental duties for the Children such as preparing meals, helping with homework, taking them to routine medical and dental appointments, or participating in their educational matters. Mother testified that both Children have IEPs; however, she has never attended a meeting with the school regarding these plans, nor has she attended any parent-teacher conferences or reached out to the Children's teachers for updates, report cards, etc. Astonishingly, Mother was unable to tell the Court what grade each of the Children will be entering. Further, it was obvious from Mother's

testimony she did not know what learning disabilities her daughters may have or what was being provided to them under their IEPs. Similarly, Mother has not attended any medical appointments or contacted any of the Children's providers for information or input on their health and well-being.

For most of the Children's lives but particularly for the six (6) month period prior to the filing of the Petition for Involuntary Termination of Parental Rights, Mother was content to have someone else be responsible for attending to all of the Children's physical, mental, and emotional needs. Although Mother is obligated to provide financial support pursuant to a Domestic Relations Order, Father testified that her payments are not always consistent. Mother has done nothing in terms of providing the Children with intangible support such as comforting them when they are sick, encouraging them when they are scared, or praising their achievements.

This Court finds that Father and Stepmother have met their burden of establishing that Mother has evidenced a settled purpose of relinquishing parental claim to the Children and has failed to perform parental duties for a period of at least six months prior to the filing of the Petition for Involuntary Termination of Parental Rights, pursuant to 23 Pa.C.S. §2511(a)(1).

As the statutory grounds for termination have been met, the Court must also 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 children. 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 Children 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 children.” **In re: J.D.W.M.**, 810 A.2d 688, 690 (citing **In re: Children 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 children--the love, comfort, security and closeness--entailed in a parent-children relationship, as well as the tangible dimension. Continuity of relationships is also important to a children, for whom severance of close parental ties is usually extremely painful. The trial court, in considering what situation would best serve the childrenren’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 Children are 13 and 16. Mother has been inconsistent in exercising her periods of custody since the inception of the Order. The last time the Children had any in-person contact with Mother was two years ago for IH and 18 months ago for TH. By all accounts, the decision to cut off contact was made by each Child herself. Counsel for the Children indicated that it is the position of the Children that they wish for Mother’s rights to be terminated so that they can be adopted by



Stepmother. The Children refer to Stepmother as “Mama Lou,” and they have become extremely bonded to her since she entered their lives in 2019. Given the preference of the Children and the limited amount of time Mother has spent with them, termination of Mother’s parental rights would not destroy an existing necessary and beneficial relationship, as there has been no relationship between Mother and the Children for quite some time. Stepmother has been a mother figure to the Children since she entered their lives. It is evident to the Court that Stepmother loves and cares for Children and treats them as her own. Stepmother has stepped in and provided the love and stability the Children deserve and has assumed the parental responsibilities that Mother has failed to perform and has evidenced a settled purpose of relinquishing.

The Court is satisfied that both Father and Stepmother understand the potential consequences of allowing Stepmother to adopt the Children, and that terminating Mother’s parental rights and allowing the adoption by Stepmother to proceed is in the best interest of the Children.

**Conclusions of Law**

1. The Court finds that SH and LD have established by clear and convincing evidence that KO parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).
2. The Court finds that SH and LD have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of IH and TH will best be served by termination of KO’s parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Ryan M. Tira, Judge

RMT/jel

c. SH

Larkin Hayman, Esquire

Patricia Shipman, Esquire/Jennifer Ayers, Esquire

Gary Weber, Esquire

Jennifer Linn, Esquire

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

**IN RE:** : **NO. AD-2021-6774**  
:   
**IH and** :   
**TH,** :   
:   
**minor children** :   
:

**DECREE**

**AND NOW**, this 24<sup>th</sup> day of **June, 2022**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of KO, held on June 22, 2022, it is hereby ORDERED and DECREED:

- (1) That the parental rights of KO be, and hereby are, terminated as to the children above-named;
- (2) That the welfare of the children will be promoted by adoption; that all requirements of the Adoption Act have been met; that the children may be the subject of adoption proceedings without any further notice to the natural mother.

**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 children 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 children'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 children 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 Childrenren & 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,

Ryan M. Tira, Judge

RMT/jel

c. SH

Larkin Hayman, Esquire

Patricia Shipman, Esquire/Jennifer Ayers, Esquire

Gary Weber, Esquire

Jennifer Linn, Esquire