

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

**IN RE:** : **NO. 2022-6813**  
:   
**JRK,** :   
:   
minor child :   
:

**OPINION AND ORDER**

**AND NOW**, this 21<sup>st</sup> day of **October, 2022**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by SK and KT on June 23, 2022. Said petition is in regard to JRK, born [redacted]. Petitioners seek to terminate the parental rights of the child's biological father, LK3, as a prerequisite to KT adopting the child. The Petition for Involuntary Termination of Parental Rights, Petition for Adoption, and hearing notice were personally served upon LK3 on July 11, 2022. A pre-trial conference on the Petition was held on August 22, 2022. LK3 did not appear at the pre-trial conference. An Order was entered by this Court on August 23, 2022, advising LK3 that if he wished to participate in the hearing on the termination of his parental rights and have counsel appointed for him, he must advise the Court in writing by September 13, 2022, so that counsel could be appointed on his behalf. LK3 had no contact with the Court concerning his participation in the hearing or the appointment of counsel on his behalf. A hearing on the Petition for Involuntary Termination of Parental Rights was held on October 21, 2022. LK3 did not appear, despite the Court finding that he had proper notice of the hearing. SK and KT appeared with their counsel, Jason Lepley, Esquire.

**Finding of Facts**

1. JRK ("Child") was born on [redacted]. The Child currently resides with SK ("Mother") and KT ("Mother's Fiancé") at [redacted].

2. Mother and Mother's Fiancé have been in a relationship since February of 2021 and have resided together since July of 2021. They are engaged to be married.

3. The Child's biological father is LK3 ("Father"). Father resides at [redacted].

4. The Child has resided with Mother since his birth and with Mother's Fiancé since July of 2021.

5. Father has had no contact with the Child since February of 2021.

6. Mother has the same phone number, Facebook account, and address that she had in February of 2021.

7. At no time has Father filed any type of custody action or requested periods of custody with the Child.

8. The Child calls Mother's Fiancé "Dad".

9. Mother's Fiancé desires to proceed with adopting the Child if the Petition for Involuntary Termination of Father's Parental Rights is granted.

10. Mother and Mother's Fiancé understand the rights and responsibilities that will be conferred upon Mother's Fiancé if he adopts the Child.

### **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). Petitioners 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 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.

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).

In the instant case, Father has demonstrated both a settled purpose to relinquish parental claim and a failure to perform parental duties for at least six months prior to the filing of the termination petition. 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 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, as of the date of the filing of the Petition for Involuntary Termination of Parental Rights, Father had evidenced both a settled purpose of relinquishing parental claim to the Child and had failed to perform his parental duties for a period of sixteen (16) months. Father's last contact with the Child was in February of 2021. Father contacted Mother in March of 2022 but did not inquire about the well-being of the Child or request to see him. Father has never utilized the court system to establish or enforce his custodial rights to the Child.

A parent has an affirmative duty to be part of a child's life; Father has clearly not met this affirmative duty. Father has not even shown a passive interest in the Child since February of 2021. This Court finds that Petitioners have clearly established that Father has evidenced a settled purpose of relinquishing parental claim to the Child and

has refused or failed to perform parental duties for a period well in excess of six (6) months. This settled purpose of relinquishment is especially apparent given the fact that, despite being properly served, Father failed to appear for the pre-trial conference or the hearing on the Petition for Involuntary Termination.

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 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).

In the present case, it is clear that Child has no bond with Father. The Child is just over two (2) years old and has not had any contact with Father since he was six (6) months old. Termination of Father's rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and the Child, given the Child's age and length of time since he last had contact with Father. Child is bonded with Mother's Fiancé, who treats him as his own child. It is evident to the Court that the Mother's Fiancé loves and cares for the Child, and has provided the love and support the Child deserves. Additionally, Mother's Fiancé has assumed the parental responsibilities that Father has utterly failed to perform and has evidenced a settled purpose of relinquishing.

The Court is satisfied that termination 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 SK and KT have established by clear and convincing evidence that LK3's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that SK and KT have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of JRK will best be served by termination of LK3's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Ryan M. Tira, Judge

RMT/jel

- c. Jason Lepley, Esquire  
LK3  
Gary Weber, Esquire  
Jennifer Linn, Esquire

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**DECREE**

**AND NOW**, this **21<sup>st</sup>** day of **October, 2022**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of LK3 held on October 21, 2022, it is hereby ORDERED and DECREED:

- (1) That the parental rights of LK3 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 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 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,

Ryan M. Tira, Judge

RMT/jel

- c. Jason Lepley, Esquire  
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