

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

|                       |   |                      |
|-----------------------|---|----------------------|
| <b>IN RE:</b>         | : | <b>NO. 2022-6793</b> |
|                       | : |                      |
| <b>UCP and</b>        | : |                      |
| <b>NRP,</b>           | : |                      |
| <b>minor children</b> | : |                      |

**OPINION AND ORDER**

**AND NOW**, this 17<sup>th</sup> day of **August, 2022**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by RD and her husband, DD, on April 4, 2022. Said petition is with regard to the rights to RD's children, NRP, born [redacted], and UCP, [redacted]. RD and DD seek to terminate the parental rights of the children's biological father, HP, as a prerequisite to having the children adopted by DD.

A pre-hearing conference on the Petition was held on May 17, 2022. RD appeared and was represented by Kathleen Lincoln, Esquire. HP resides in the Philippines, and Attorney Lincoln filed an Affidavit of Service indicating that the Petition for Involuntary Termination of Parental Rights, Petition for Adoption, and Notice of pre-hearing conference was sent to his place of residence via U.S. First Class International Mail, postage prepaid, and via Registered Mail, postage prepaid. HP did not attend the pre-hearing conference. An Order was entered scheduling the hearing on the Petition for Involuntary Termination of Parental Rights for August 16, 2022. HP was advised to notify the Court in writing no later than July 1, 2022, if he wished to contest the termination of his parental rights and have counsel appointed for him. HP did not reach out to the Court to request that counsel be appointed on his behalf, or to seek arrangements to participate in the hearing via telephone or Zoom. Due to the unusual circumstances of HP's residence out of the country and potential obstacles to communication, this Court felt it prudent to appoint counsel for the children regardless of

whether Father contested the termination of his parental rights. Accordingly, Sarah Stigerwalt-Egan, Esquire, was appointed as counsel for the children.

At the time of the conference, Attorney Lincoln made an oral motion for permission to serve HP with notice of the date of the hearing on the Petition for Involuntary Termination of Parental Rights via publication. The Court granted the motion and directed publication pursuant to Pa.R.C.P. 430. As HP was known to communicate through Facebook Messenger, the Court also directed RD and/or Attorney Lincoln to provide a copy of the Order to HP through Facebook Messenger. On August 15, 2022, Attorney Lincoln filed an Affidavit of Service which included Proofs of Publication in the Lycoming Reporter on July 8, 2022, and in the Sun Star Bacolod Newspaper in the Republic of the Philippines on July 13, 2022, July 20, 2022, and July 27, 2022. Additionally, the Affidavit of Service contained screenshots of conversations between HP and RD on Facebook Messenger, which clearly show pictures of the scheduling Orders in this matter. The Court is satisfied that HP was properly served with notice of the hearing on the Petition for Involuntary Termination of Parental Rights.

A hearing on the Petition for Involuntary Termination of Parental Rights was held on August 16, 2022. The Court received an email sent by HP at 6:32 p.m. on August 15, 2022, requesting the matter be continued as he needed additional time to arrange for his appearance. On the record, the Court indicated that it was clear that HP had adequate advance notice of the hearing and had made absolutely no efforts to contact the Court until the "eleventh hour". The Court found the last-minute continuance request was insincere at best and merely an attempt to delay the proceedings and the hearing proceeded as scheduled. RD and DD appeared and were represented by Kathleen Lincoln, Esquire. Sarah Stigerwalt-Egan, Esquire, appeared as counsel for NRP and UCP.

### **Finding of Facts**

1. NRP was born [redacted], and UCP was born on [redacted] (“Children”). The Children currently reside with their mother, RD (“Mother”) and Mother’s husband, DD (“Stepfather”) at [redacted].
2. Mother and Stepfather have been married since 2019 but have known each other since high school. Stepfather has known the Children since they were born.
3. The Children’s biological father is HP (“Father”). Father resides at [redacted].
4. Mother and Father were married at the time of the Children’s births. They divorced in 2019.
5. In September of 2019 Father sent Mother a text that he was leaving the country on an “extended vacation” but would be back in three months.
6. On October 1, 2019, Father left the United States for the Philippines. Father has never returned to the United States.
7. To Mother’s knowledge, there is nothing legally preventing Father from returning to the United States.
8. The Children have never been to the Philippines to visit Father.
9. Father and the Children communicated via Facebook Messenger when he first left the country. However, due to some concerning interactions, both Children have blocked Father and no longer communicate with him.
10. Father does not pay child support. The Children receive social security benefits due to his disability.
11. When Mother has asked Father for financial contributions towards the Children’s additional expenses he has responded with vulgarities and told her to ask her husband.

12. On one occasion in 2020, Father sent some items for the Children to his older daughter, who delivered them to the Children.

13. Father has sent no other letters, cards, or gifts for the Children on their birthdays or Christmas since relocating to the Philippines in 2019.

14. The Children refer to Stepfather as “D” or “Dad.” They have a very close relationship.

15. Stepfather treats the Children as his own.

16. The Children wish to terminate Father’s parental rights and be adopted by Stepfather.

17. Stepfather desires to proceed with adopting the Children if the Petition for Involuntary Termination of Father’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). Mother and Stepfather 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, Father has evidenced both a settled purpose of relinquishing parental claim to the Children and has failed to perform his 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 Father has clearly not met this affirmative duty. In September of 2019, Father texted Mother and told her he was going on an "extended vacation" but would be back in 3 months. Father left for the Philippines on October 1, 2019, and has yet to return to the United States. The Children have never visited Father while he has been out of the country. They have had very little communication with Father since he relocated.

As a result of his decision to leave the country almost three years ago and not return, Father has failed to perform any basic parental duties for the Children such as preparing meals, helping with homework, attending sporting events, taking them to routine medical and dental appointments, or participating in their educational matters. For nearly three years, including the six months immediately prior to the filing of the Petition for Involuntary Termination of Parental Rights, Father was content to have someone else be responsible for attending to all of the Children's physical, mental, and emotional needs. Although the Children receive a Social Security benefit as a result of Father's disability, Father has refused any additional support requested by Mother. Additionally, Father 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 Mother and Mother's Husband have established by clear and convincing evidence that Father has evidenced a settled purpose of relinquishing parental claim to the Children **and** has refused or failed to perform parental duties for a period well in excess of six months pursuant to 23 Pa.C.S.A. §2511(a)(1). This settled purpose of relinquishment is especially apparent given the fact that, despite being properly served with copies of all Orders, Father failed to contact the Court to indicate that he wished to contest the termination and have counsel appointed for him, and failed to make any sort of arrangements to participate in the hearing on the Petition for Involuntary Termination. Father's email to the Court after the close of business on the day prior to the hearing requesting to continue the hearing was simply too little, too late.

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)).

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 15 and 11. Father left the country nearly three years ago and never returned. The last time the Children had any in-person contact with Father would have been prior to October 1, 2019, before he left for the Philippines. Although Mother testified that the Children initially had contact with Father through Facebook Messenger, his interactions with them caused them to make the decision to block him and cut off contact with him. Counsel for the Children indicated that it is the position of the Children that they wish for Father's rights to be terminated so that they can be adopted by Stepfather. As NRP is over the age of 12, she signed a Consent to Adoption pursuant to 23 Pa.C.S.A. §2711(a)(1), further evidencing her desire to have Father's parental rights terminated.

The Children refer to Stepmother as "D" or "Dad" and they have become extremely bonded to him since he married Mother in 2019. Stepfather takes them hunting or to his shop to work on cars; has coached their soccer teams; drives them to practice; and takes care of them when they are sick if Mother is not available. Given the preference of the Children and the limited amount of contact Father has had with them in the past three years, termination of Father's parental rights would not destroy an



existing necessary and beneficial relationship, as Father allowed whatever bond they may have had in the past lapse when he relocated to the Philippines almost three years ago. Stepfather has been a father figure to the Children since he married Mother. It is evident to the Court that Stepfather loves and cares for Children and treats them as his own. Stepfather has stepped in and provided the love and stability the Children deserve and has assumed the parental responsibilities that Father has failed to perform and has evidenced a settled purpose of relinquishing.

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

**Conclusions of Law**

1. The Court finds that RD and DD have established by clear and convincing evidence that HP's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that RD and DD have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of NRP and UCP will best be served by termination of HP's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Ryan M. Tira, Judge

RMT/jel

c. Kathleen Lincoln, Esquire – 202 Market St., Lewisburg, PA 17837  
Sarah Stigerwalt-Egan, Esquire – 6 N. Front St., Sunbury, PA 17801  
HP

Gary Weber, Esquire  
Jennifer Linn, Esquire

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

**IN RE:** : **NO. 2022-6793**  
:   
**UCP and** :   
**NRP,** :   
:   
**minor children** :

**DECREE**

**AND NOW**, this 17<sup>th</sup> day of **August, 2022**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of HP, held on August 16, 2022, it is hereby ORDERED and DECREED:

- (1) That the parental rights of HP 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 father.

Father is advised that they may appeal this Order to the Superior Court of Pennsylvania by filing written notice of appeal in the office of Lycoming County Register and Recorder's Office within thirty (30) days of the date of the filing of this Order. In the event either party elects to appeal from this Order they are bound by the Pennsylvania Rules of Appellate Procedure.

**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

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