

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

IN RE:	:	No. 2025-6951
C.D.H	:	
Minor Child	:	Petition to Involuntarily
	:	Terminate Parental Rights

OPINION AND ORDER

And now, this 23rd day of December, 2025, before the Court is Petitioners', A.J.H. ("Mother") and D.C.C., Jr. ("Prospective Adoptive Father"), petition to involuntarily terminate the parental rights of J.S. ("Father") regarding C.D.H. ("Child"). Petitioners filed their petition on March 5, 2025, by and through counsel, Melody Protasio Esquire. A conference on the Petition was scheduled for April 17, 2025¹. A hearing on the petition occurred on September 29, 2025. Mother appeared personally represented by Attorney Protasio and Father appeared personally represented by Michael Morrone, Esquire. Johanna Berta, Esquire, appeared in her capacity as counsel for Child.

Findings of Fact

1. C.D.H. was born on [redacted], in Williamsport, Lycoming County, Pennsylvania.
2. He is the son of Mother, A.J.H., born [redacted], and Father, J.S. was born on [redacted].
3. Mother and Father were not married at the time of the Child's birth.
4. Child currently resides with Mother and has for his entire life.
5. Since May of 2024, Child has resided with both Mother and Prospective Adoptive Father at a confidential address.

¹ Following the conference, a hearing on the petition was scheduled for June 24, 2025 at 4:00 p.m. By Order of the Court dated June 2, 2025, the conference was rescheduled to June 30, 2025. Following the conference on June 30, 2025, this Court issued an Order on July 15, 2025, scheduling the hearing on the Petition for September 29, 2025, at 9:00 a.m. Additionally, the Guardian ad Litem who was initially appointed was released and a counsel for Child was appointed.

6. Father's last known address is [redacted], Williamsport, Pennsylvania. Father resides with his daughter, J.S. and M.B. and her children.
7. Father has not had contact with Child for six (6) months preceding the filing of the subject Petition, despite being permitted to have contact with Child through custody proceedings.
8. On June 6, 2024, Mother filed a Petition for Protection from Abuse against Father, alleging that Father approached Mother's friend who was babysitting Child at a public park and began to make threats toward the friend. Mother was on the phone with her friend and overheard the interaction. Additionally, Father allegedly threatened Mother over the phone. Ultimately, Father placed Child in the back of his car and left the park with Child.
9. The Petition sought to have Father's custody of and contact with Child prohibited until such time that a final abuse hearing occurred. The court granted Mother a temporary PFA against Father. Child was removed from the Temporary PFA Order.
10. A Custody Order was issued on July 22, 2024, wherein Father was awarded supervised physical custody on each Tuesday, Thursday, Friday, and Saturday from 1:00 p.m. to 4:00 p.m. at a public location. The temporary PFA was in place at the time of the custody proceeding.
11. Under the Custody Order, Father was ordered to petition the court for approval when Father identified an appropriate supervisor. Father's supervised custody was not to begin until the court approved his identified supervisor.
12. On September 25, 2024, a final PFA Order was issued granting Mother protection from Father for a period of one (1) year. The PFA expired on September 25, 2025.
13. On December 2, 2024, Father filed a Petition for Special Relief filed by and through his counsel at the time. In his petition, Father alleged that no supervisor was agreed upon by the parties, and thus, he was unable to exercise his periods of custody. Father requested the Court appoint a supervisor.
14. Father's Petition for Special Relief was subsequently withdrawn, and the hearing scheduled for January 10, 2025, on the petition was canceled.
15. From April of 2024 to June of 2024, Father and Mother had miscommunications regarding custody of Child. It was Father's understanding that he was to pick Child up from daycare, and he testified Mother began retrieving Child early before Father could get to the facility.

16. From June of 2024 to December of 2024, Father testified that it was his understanding he could not contact Mother even regarding custody of Child because of the active PFA.
17. Father did contact Mother regarding Child and requesting visitation in October of 2024 and November of 2024 following the final abuse hearing wherein it was directed that he and Mother shall only have contact with each other regarding Child using the AppClose text communication application.
18. The subject petition was filed in March of 2025, six (6) months after the final PFA order was in place.
19. Father's last custody was in June of 2024, by agreement of all parties.
20. Mother and Father agree to miscommunication and one or both parties having the other's cellular phone number blocked to prevent communication.

Discussion

Petitioners seek a decree terminating the parental rights of Father under 23 Pa.C.S.A.

Section 2511(a)(1) and (2), which provides as follows:

(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.

In order to involuntarily terminate a parent's parental rights, a party must prove by clear and convincing evidence one of the above subsections of 23 Pa.C.S. §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 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, 872 A.2d 1200 (Pa. 2005) citing *In re: D.J.S.*, 737 A.2d 283, 286 (Pa. Super. 1999).

In the instant matter, the Court cannot agree that under 23 Pa.C.S.A. Section 2511(a)(1) Father has “...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.” Contrarily, there was not conduct that continued for a period of at least six (6) months prior to the filing of the petition by Father that evidenced a *settled purpose of relinquishing parental claim* to Child, nor is there clear and convincing evidence that Father refused or failed to perform parental duties. All parties agree, and the record is clear, that an active PFA Order was in place. The temporary PFA Order was in place at the time of the last custody proceeding in July of 2024. It is Father’s testimony that between July of 2024 to September of 2024 when there the second abuse hearing had not yet occurred that he was unaware whether he was able to exercise custody of Child. After the second abuse hearing on September 24, 2024, Father was provided clarity that he can contact Mother regarding only Child. Father testified that he did contact Mother regarding Child and inquired after his well-being and attempted to determine when he could exercise custody. Mother testified that she would remind Father he needed to have an appropriate supervisor identified and approved by

the Court before he was permitted to exercise custody. In December, Father filed for special relief to have a supervisor appointed instead. Through further miscommunication, it was Father's understanding that the hearing on his petition for special relief was rescheduled and not canceled. The record is more indicative of Father being prevented from or confused by Court Orders to adequately exercise custody than the record is indicative of Father exhibiting a settled purpose to relinquish his parental rights.

However, grounds for termination under 23 Pa.C.S. §2511(a)(1) may also be proven where a parent fails to perform parental duties for a period in excess of six months prior to the filing of the Petition for Involuntary Termination of Parental Rights.

In determining what constitutes parental duties, the Pennsylvania Supreme Court has opined:

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)(emphasis added).

Here, as above, there is not sufficient evidence to establish that Father's inability or refusal to perform his parental duties was wholly within his control. Father made attempts to remedy his inability perform his parental duties for Child. Additionally, the temporary PFA

that was not scheduled for a final hearing until two months after its filing caused Father to believe he was prevented from exercising custody, and the PFA did prevent Father from contacting Mother regarding Child for a period of two months. A portion of Father's inability or refusal to perform parental duties is explained by the ongoing dispute between the parents.

To satisfy the requirements of Section 2511(a)(2), a party must demonstrate that Father, through:

(1) [R]epeated and continued incapacity, abuse, neglect or refusal; (2) such incapacity, abuse, neglect or refusal has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being; and (3) the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.

In re: Adoption of M.E.P., 825 A.2d 1266, 1272 (Pa. Super. 2003).

Under Section 2511(a)(2), "[t]he grounds for termination [of parental rights] due to parental incapacity that cannot be remedied are not limited to affirmative misconduct. To the contrary, those grounds may include acts of refusal as well as incapacity to perform parental duties." *In re: A.L.D.*, 797 A.2d 326, 337 (Pa. Super. 2002) (citations omitted).

Here, Petitioners have again failed to establish by clear and convincing evidence that Father has repeatedly and continuously failed or refused to provide the child with essential parental care, control or subsistence necessary for Child's general well-being. When not in the care of Father, Child remains with Mother and her paramour. Aside from the incident in the park where Father removed Child from the care of Mother's friend, there is not evidence that Father has ever refused or prevented appropriate care for Child. Nonetheless, even when Father did remove Child from the park, Child remained in the care of Father until such time that law enforcement required he turn over Child to Mother due to the temporary PFA that was in place. Moreover, the causes of Father's inability to care for Child appropriately can be remedied. Firstly, because there remains an active Custody Order in place, Father need only

find and have approved by the Court an appropriate supervisor for his visitation time or challenge the current Custody Order. Secondly, because the final PFA Order has expired, Mother and Father can begin to renegotiate the terms of custody and come to an agreement on Father's visitation periods. Based on the foregoing, the Court has determined that Petitioners have not established by clear and convincing evidence that Father's parental rights to Child should be terminated under Section 2511(a)(2).

In evaluating the grounds for termination of parental rights under Section 2511(b), a court "must determine whether termination is in the best interests of the child, considering the developmental, physical, and emotional needs and welfare of the child pursuant to Section 2511(b)." *In re Adoption of S.P.*, 616 Pa. 309, 47 A.3d 817, 830 (2012).

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 is not terminating the parental rights of Father; thus, it is not necessary to evaluate whether there is a bond between Father and Child under Section 2511(b).

Conclusions of Law

The Court finds that Petitioners, A.J.H. and D.C.C., Jr., have **not established** by clear and convincing evidence that the parental rights of J.S. should be involuntarily terminated pursuant to Section 2511(a)(1) and (2). Accordingly, the Petition for Involuntary Termination of Parental Rights of Father, J.S. is **DENIED**.

The Petition for Adoption filed by Petitioners, A.J.H. and D.C.C., Jr., on March 5, 2025, is hereby **DISMISSED AS MOOT**.

The Custody Order from July 22, 2024, remains in full force and effect.

By the Court,

Ryan M. Tira, Judge

RMT/asw

CC: Melody Protasio, Esq.
Michael Morrone, Esq.
Johanna Berta, Esq.