

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: T.S.C., a Minor

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.G.-F.

No. 1960 MDA 2013

Appeal from the Decree entered October 21, 2013,
in the Court of Common Pleas of Lycoming County,
Orphans' Court, at No(s): 6354

BEFORE: PANELLA, OLSON and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED APRIL 23, 2014

J.G.-F. ("Mother") appeals the Decree granting the Petition filed by paternal grandmother, E.H.C. ("Paternal Grandmother"), of the subject male child, T.S.C. ("Child") (born in September of 2008),¹ to involuntarily terminate Mother's parental rights, pursuant to section 2511(a)(1) and (b) of the Adoption Act, 23 Pa.C.S.A. § 2511(a)(1) and (b), so that Paternal Grandmother may adopt Child. Additionally, Mother's counsel, Jeffery Frankenburger, Esquire ("Frankenburger"), has filed a Petition for Permission to Withdraw as Counsel and a brief pursuant to ***Anders v. California***, 386 U.S. 738, 744 (1967). We affirm and grant Frankenburger's Petition to Withdraw.

¹ The trial court found that Child's father, B.C. ("Father"), entered into a custody stipulation in October 2010, granting Paternal Grandmother sole legal custody and primary physical custody, and that Child has resided with Paternal Grandmother, as the only constant parent in his life, since that time. The trial court also found that Paternal Grandmother has standing *in loco parentis* to file the termination Petition.

The trial court set forth the findings of fact in its Opinion and Order which we adopt for the purpose of this appeal. **See** Opinion and Order, 10/21/13, at 2-5.² Relevantly, Mother has been in and out of prison since October 2008. Mother has been in prison since May 2013 and expects to be released in September 2014. Due to Mother's time in prison and Father's absences, Paternal Grandmother has been the only constant parent in Child's life. On November 15, 2012, Paternal Grandmother filed a Petition seeking to terminate Mother's parental rights to Child so that she could adopt him. The trial court appointed counsel for Mother, and a guardian *ad litem* for Child.

The trial court held a hearing on the Petition on September 11, 2013. At the hearing, Paternal Grandmother testified on her own behalf, and presented the testimony of her paramour, H.E.H., and Father. Mother testified on her own behalf.

On October 21, 2013, the trial court entered the Decree terminating Mother's parental rights. Mother filed a timely Notice of Appeal. The trial court directed Mother to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b) within twenty-one days.

² The Opinion and Order is dated October 8, 2013. While the last page of the Opinion and Order includes a date stamp of October 14, 2013, the docket indicates that the Opinion and Order was not docketed until October 21, 2013. Thus, we will utilize the October 21, 2013 date when citing to the Opinion and Order.

Mother filed a timely Concise Statement.³

On December 23, 2013, Attorney Frankenburger filed an **Anders** brief with this Court that raises the following questions for our review:

I. Whether [Frankenburger's Petition to Withdraw] should be granted where counsel has investigated the possible grounds for appeal and finds the appeal frivolous[?]

II. Whether the lower court erred in terminating the parental rights of [Mother] when [Paternal Grandmother] did not prove by clear and convincing evidence the grounds for termination[?]

Anders Brief at 5 (capitalization omitted). Frankenburger has filed a separate Petition to Withdraw as counsel with this Court. Mother filed neither a *pro se* brief, nor retained alternate counsel for this appeal.

Initially, we note that in **In re V.E.**, 611 A.2d 1267, 1274-75 (Pa. Super. 1992), this Court extended the **Anders** principles to appeals involving the termination of parental rights. "When considering an **Anders** brief, this Court may not review the merits of the underlying issues until we address counsel's request to withdraw." **In re S.M.B.**, 856 A.2d 1235, 1237 (Pa. Super. 2004). Pursuant to **Anders**, when counsel believes an appeal is frivolous and wishes to withdraw from representation, he must do the following:

³ In a children's fast track case, the appellant is required to simultaneously file her notice of appeal and Rule 1925(b) concise statement. **See** Pa.R.A.P. 1925(a)(2)(i); Pa.R.A.P. 905(a)(2). However, Paternal Grandmother has not raised any objection or claim of prejudice. Accordingly, we conclude that the late filing of Mother's Rule 1925(b) Concise Statement does not render her claims waived on appeal. **See In re K.T.E.L.**, 983 A.2d 745, 747-48 (Pa. Super. 2009).

(1) petition the court for leave to withdraw stating that after making a conscientious examination of the record ..., counsel has determined the appeal would be frivolous; (2) file a brief referring to anything that might arguably support the appeal, but which does not resemble a “no-merit” letter or *amicus curiae* brief; and (3) furnish a copy of the brief to defendant and advise [her] of [her] right to retain new counsel, proceed *pro se*, or raise any additional points [s]he deems worthy of this Court’s attention.

In re S.M.B., 856 A.2d at 1237 (citation omitted). In ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009), our Supreme Court addressed the second requirement of ***Anders***, *i.e.*, the contents of an ***Anders*** brief, and required that the brief

- (1) provide a summary of the procedural history and facts, with citations to the record;
- (2) refer to anything in the record that counsel believes arguably supports the appeal;
- (3) set forth counsel’s conclusion that the appeal is frivolous; and
- (4) state counsel’s reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

Santiago, 978 A.2d at 361. “After an appellate court receives an ***Anders*** brief and is satisfied that counsel has complied with the aforementioned requirements, the Court then must undertake an independent examination of the record to determine whether the appeal is wholly frivolous.” ***In re S.M.B.***, 856 A.2d at 1237.

Here, Frankenburger has complied with each of the requirements of **Anders**. Frankenburger indicates that he conscientiously examined the record and determined that an appeal would be frivolous. Further, Frankenburger's **Anders** brief comports with the requirements set forth by the Supreme Court of Pennsylvania in **Santiago**. Finally, the record contains a copy of the letter that Frankenburger sent to Mother, advising her of her right to proceed *pro se* or retain alternate counsel and file additional claims, and stating Frankenburger's intention to seek permission to withdraw. Accordingly, Frankenburger has complied with the procedural requirements for withdrawing from representation and we will review Mother's claims on appeal regarding the termination of her parental rights.

In an appeal from an order terminating parental rights, our scope of review is comprehensive: we consider all the evidence presented as well as the trial court's factual findings and legal conclusions. However, our standard of review is narrow: we will reverse the trial court's order only if we conclude that the trial court abused its discretion, made an error of law, or lacked competent evidence to support its findings. The trial judge's decision is entitled to the same deference as a jury verdict.

In re L.M., 923 A.2d 505, 511 (Pa. Super. 2007) (citations omitted).

Termination of parental rights is controlled by section 2511 of the Adoption Act. The burden is upon the petitioner "to prove by clear and convincing evidence that its asserted grounds for seeking the termination of parental rights are valid." **In re R.N.J.**, 985 A.2d 273, 276 (Pa. Super. 2009). "[C]lear and convincing evidence is defined as 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.” **Id.** (citation and internal quotation marks omitted). Further, the “trial court is free to believe all, part, or none of the evidence presented and is likewise free to make all credibility determinations and resolve conflicts in the evidence.” **In re M.G.**, 855 A.2d 68, 73-74 (Pa. Super. 2004). If competent evidence supports the trial court’s findings, “we will affirm even if the record could also support the opposite result.” **In re Adoption of T.B.B.**, 835 A.2d 387, 394 (Pa. Super. 2003). Further, satisfaction of any one subsection of section 2511(a), along with consideration of section 2511(b), is sufficient for the involuntary termination of parental rights. **In re B.L.W.**, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*).

Here, the trial court terminated Mother’s parental rights under section 2511(a)(1) and (b), which provide 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.

* * *

(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.

23 Pa.C.S.A. § 2511.

We have explained this Court's review of a challenge to the sufficiency of the evidence supporting the involuntary termination of a parent's rights pursuant to section 2511(a)(1) as follows:

To satisfy the requirements of section 2511(a)(1), the moving party must produce clear and convincing evidence of conduct, sustained for at least the six months prior to the filing of the termination petition, which reveals a settled intent to relinquish parental claim to a child or a refusal or failure to perform parental duties.

* * *

Once the evidence establishes a failure to perform parental duties or a settled purpose of relinquishing parental rights, the court must engage in three lines of inquiry: (1) the parent's explanation for his or her conduct; (2) the post-abandonment contact between parent and child; and (3) consideration of the effect of termination of parental rights on the child pursuant to Section 2511(b).

In re Z.S.W., 946 A.2d 726, 730 (Pa. Super. 2008) (citations omitted).

[T]o be legally significant, the [post-abandonment] contact must be steady and consistent over a period of time, contribute to the psychological health of the child, and must demonstrate a serious intent on the part of the parent to recultivate a parent-child relationship and must also demonstrate a willingness and capacity to undertake the parental role. The parent wishing to

reestablish [her] parental responsibilities bears the burden of proof on this question.

In re Z.P., 994 A.2d 1108, 1119 (Pa. Super. 2010) (citation omitted); **see also *In re Adoption of C.L.G.***, 956 A.2d 999, 1006 (Pa. Super 2008) (*en banc*).

Further, regarding the definition of “parental duties,” this Court has stated as follows:

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 [herself] to take and maintain a place of importance in the child’s life.

Parental duty requires that the parent act affirmatively with good faith interest and effort, and not yield to every problem, in order to maintain the parent-child relationship to the best of his or her ability, even in difficult circumstances. A parent must utilize all available resources to preserve the parental relationship, and must exercise reasonable firmness in resisting obstacles placed in the path of maintaining the parent-child relationship. Parental rights are not preserved by waiting for a more suitable or convenient time to perform one’s parental responsibilities while others provide the child with . . . her physical and emotional needs.

In re B., N.M., 856 A.2d 847, 855 (Pa. Super. 2004) (citations omitted); ***see also In re Adoption of S.P.***, 47 A.3d 817, 828 (Pa. 2012).

Here, the trial court thoroughly considered the facts and determined that Mother had failed to perform her parental duties for the requisite six-month period. The trial court pointed out that Mother had not seen Child since January 2009 and has not performed any parental duties since that time. Opinion and Order, 10/21/13, at 2-4, 13; ***see also*** Trial Court Opinion, 11/21/13, at 2. The trial court further stated that Mother has been incarcerated and re-incarcerated for her drug-related conduct and that Mother was currently in prison and not expected to be released until September 2014. Opinion and Order, 10/21/13, at 2-3; N.T., 9/11/13, at 50, 61-62; ***see also In re Adoption of S.P.***, 47 A.3d at 828 (stating that the trial court may consider a parent's incarceration in ruling on a termination petition). The trial court also properly considered Mother's lack of contact with Child during her prior periods of incarceration. Opinion and Order, 10/21/13, at 3, 13; ***see also*** Trial Court Opinion, 11/21/13, at 2. Indeed, the trial court determined that Mother's one attempted phone call to Child around the time of his birthday in 2010, which was not returned, was insufficient to amount to the performance of her parental duties. Opinion and Order, 10/21/13, at 3, 13-14; ***see also*** Trial Court Opinion, 11/21/13, at 2. The trial court additionally found that Mother did not send Child any gifts, cards, or letters. Opinion and Order, 10/21/13, at 3, 13; ***see also In***

re Adoption of S.P., 47 A.3d at 828 (stating that a parent “has an affirmative duty to love, protect and support his child and to make an effort to maintain communication and association with that child.”) (citation omitted); **see also In re G.P.–R.**, 851 A.2d 967, 976 (Pa. Super. 2004) (stating that “[i]t is incumbent upon a parent when separated from his child to maintain communication and association with the child. This requires an affirmative demonstration of parental devotion, imposing upon the parent the duty to exert himself, to take and maintain a place of importance in the child’s life.”).

After our careful review of the trial court’s application of the law to the facts of this case, we find no reason to disturb the trial court’s conclusions that Mother failed to perform her parental duties with regard to Child, and that she failed to sustain her burden of proof with regard to the post-abandonment contact. Thus, the trial court’s determinations regarding section 2511(a)(1) are supported by competent, clear and convincing evidence in the record. **See In re Adoption of S.P.**, 47 A.3d at 826-27.

Regarding section 2511(b), the court inquires whether the termination of Mother’s parental rights would best serve the developmental, physical and emotional needs and welfare of the child. **See In re C.M.S.**, 884 A.2d 1284, 1286-87 (Pa. Super. 2005). “Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child.” **Id.** at 1287 (citation omitted). The court must also discern

the nature and status of the parent-child bond, with utmost attention to the effect on the child of permanently severing that bond. **Id.**; **see also In re K.Z.S.**, 946 A.2d 753, 762-63 (Pa. Super. 2008) (stating that where there is no evidence of any bond between the parent and child, it is reasonable to infer that no bond exists). Additionally, “the strength of emotional bond between a child and a potential adoptive parent is an important consideration in a ‘best interests’ analysis.” **In re I.J.**, 972 A.2d 5, 13 (Pa. Super. 2009). Finally, the focus in terminating parental rights under section 2511(a) is on the parent, but it is on the child under section 2511(b). **In re Adoption of C.L.G.**, 956 A.2d at 1008.

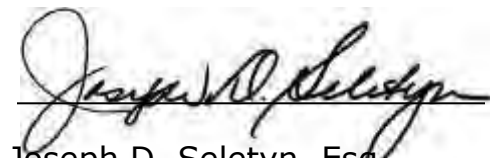
Here, the trial court found that Child had not seen Mother since January 2009. **See** Opinion and Order, 10/21/13, at 4, 14; **see also In re J.L.C.**, 837 A.2d 1247, 1249 (Pa. Super. 2003) (stating that parent must put himself in a position to assume daily parenting responsibilities so that he could develop a bond with child). The trial court additionally stated that Child refers to Paternal Grandmother as “Mommy.” Opinion and Order, 10/21/13, at 14. Further, the trial court found that Child has no bond with Mother, and that Child would not suffer any trauma from the termination of Mother’s parental rights. **Id.**; **see also In re K.K.R.-S.**, 958 A.2d at 535-36 (stating that where no clear bond between the parent and the subject child was apparent, there was no requirement to prove the absence of a positive bond). The trial court also pointed out that Paternal Grandmother

had been Child's primary custodian and caretaker for the majority of his life. **See** Opinion and Order, 10/21/13, at 14-15; **see also In re T.S.M.**, 71 A.3d 251, 268 (Pa. 2013) (stating that "courts considering termination must also consider whether the children are in a pre-adoptive home and whether they have a bond with their foster parents."). Based upon the foregoing, competent evidence supports the trial court's determination that the termination of Mother's parental rights would serve Child's best interests. **See In re Z.P.**, 994 A.2d at 1125 (stating that a child's life "simply cannot be put on hold in the hope that [a parent] will summon the ability to handle the responsibilities of parenting."); **see also In re Adoption of S.P.**, 47 A.3d at 826-27.

Based upon the trial court's analysis, we conclude that Mother's appeal is wholly frivolous. Thus, we affirm the Decree terminating Mother's parental rights and grant Frankenburger's Petition to Withdraw under the precepts of **Anders**.

Decree affirmed. Petition to Withdraw granted.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/23/2014

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

IN RE: : NO. 6354
ADOPTION OF :
T.S.C., :
Minor child :

FILED
LYCOMING COUNTY
2013 OCT 21 P 3:58
ANNABEL MILLER
RECORDER OF DEEDS

OPINION AND ORDER

AND NOW, this 8th day of October, 2013, before the Court is a Petition for
Involuntary Termination of Parental Rights filed by Grandmother, [REDACTED] E.H.C.
in
regard to the rights of her grandchild, [REDACTED] T.S.C.
on November 15th, 2012.

Grandmother seeks to terminate the parental rights of the child's biological mother,
[REDACTED] J.G.-F.,
as a prerequisite to adopting the child. A hearing on the Petition
was held on September 11th, 2013, at which time Mother was present with her counsel,
Kathryn Belfy, Esquire. Grandmother was present with her counsel Meghan Young,
Esquire. Father was present without counsel. The Guardian Ad Litem, [REDACTED] A.L.,
Esquire, was present on behalf of the child.

I. Findings of Facts

a. Parites

- T.S.C.
1. [REDACTED] was born on September 8th, 2008, in Williamsport, Lycoming County, Pennsylvania. He currently resides with his paternal E.H.C. Grandmother, [REDACTED] at 1905 W. 3rd Street, Williamsport, Lycoming County, Pennsylvania.
 2. The child's Mother is J.G.-F. [REDACTED], who is currently incarcerated at the State Correctional Institution at Muncy, Pennsylvania. Mother was incarcerated in May 2013. It is anticipated that Mother will remain incarcerated until September of 2014.
 3. The child's Father is B.C. [REDACTED], who resides at 324 Park Avenue, Williamsport, Pennsylvania 17701.
 4. During the first few months of the child's life, the parties, including paternal Grandmother, exercised a shared custody schedule.

b. Mother's Involvement in the Child's life

5. Mother first became incarcerated in October 2008 and turned the child over to Father. Mother spent only a period of a few days incarcerated.
6. Mother testified that during this period of her life, her addiction made her incapable of caring for the minor child.
7. Mother was incarcerated again from the end of January 2009 until March 2009. Mother did not attempt to contact Father or the child during this period of incarceration.

8. Mother did not see her child from the period of March 2009 until her next date of incarceration. Mother did contact Father on at least one occasion.
9. Mother was incarcerated from June 23, 2009, until December 12, 2009. Mother made no attempt to contact the minor child during this period.
10. Mother was released from December 12, 2009 until December 24, 2009. During this period, Mother made no attempts to contact Father, paternal Grandmother or the minor child.
11. Mother spent the majority of 2010 either incarcerated or in various rehabilitation facilities.
12. Mother's only attempted contact was a phone call to the minor child around the time of his birthday in 2010 but the phone call was not returned.
13. In February 2011, Mother was released from her rehabilitation program. Mother made one call to Father's cell phone in March 2011.
14. Beginning in April 2011, Mother was incarcerated for a period of 90 days.
15. After her release, Mother attempted to contact Father through Facebook on two occasions.
16. Mother was incarcerated on October 16, 2011, and released on October 23, 2012. During this period, Mother made no attempts to contact her child.
17. After her release, Mother sent several messages to Father on Facebook from the period of October 23, 2012 until the filing of this petition on November 15, 2012. Grandmother contacted Mother regarding voluntary termination.
18. Mother sent the child no gifts, cards, or letters.

19. Mother has not seen the child since at least January 2009.

c. Father's involvement with the minor child

20. Father and Paternal Grandmother entered into a custody stipulation in October 2010 granting Grandmother sole legal custody and primary physical custody, due to Father's incarceration.

21. This Custody Stipulation remained in effect until the time of filing of the Petition for Termination.

22. Father agreed that Mother had contacted him sporadically regarding the minor child.

23. Father indicated that he told Mother any decisions or information on the minor child would need to be communicated through Grandmother. Father's testimony was credible.

24. As of the time of the hearing, Father has an active role in ^{T.S.C.'s} [REDACTED] daily life.

25. ^{T.S.C.} [REDACTED] has lived with only Grandmother since February 2013. Prior to February 2013, Father, Grandmother and the minor child all resided at the 1905 West 3rd Street address.

26. At the time of the hearing, Father had the same cell phone number for at least a period of two years.

d. Grandmother's involvement in the minor child's life.

27. ^{T.S.C.} [REDACTED] spent his first night home from the hospital in the care of Grandmother.
28. With the consent of both natural parents, Grandmother exercised her own periods of physical custody during the child's first few months.
29. Grandmother changed addresses in May 2009 to her current address. Grandmother informed Maternal Grandmother of her new address. This testimony was credible.
30. Grandmother has had the same telephone number for 15 years.
31. ^{T.S.C.} [REDACTED] refers to Grandmother as "mommy" or "mama".
32. Grandmother has been taking ^{T.S.C.} [REDACTED] to doctor's appointments, beginning with his first well baby visit.
33. Grandmother has missed work when necessary to care for ^{T.S.C.} [REDACTED].
34. Grandmother considers ^{T.S.C.} [REDACTED] her son.
35. Grandmother includes ^{T.S.C.} [REDACTED] in activities with her other son, ^{C.A.A.} [REDACTED].
[REDACTED]
36. Grandmother cared for ^{T.S.C.} [REDACTED] during both parents' periods of absence.
37. Both Mother and Father have abdicated the majority of responsibility for ^{T.S.C.} [REDACTED] to Grandmother since his birth.

II. Standing

1. 23 Pa. C. S. § 2512 provides:

§2512. Petition for involuntary termination.

(a) **Who may file.**--A petition to terminate parental rights with respect to a child under the age of 18 years may be filed by any of the following:

- (1) Either parent when termination is sought with respect to the other parent.
- (2) An agency.
- (3) The individual having custody or standing in loco parentis to the child and who has filed a report of intention to adopt required by section 2531 (relating to report of intention to adopt).
- (4) An attorney representing a child or a guardian ad litem representing a child who has been adjudicated dependent under 42 Pa.C.S. § 6341(c) (relating to adjudication).

2. Grandmother, ^{E.H.C.} [REDACTED] has custody by Stipulation of October 2010 and also stands in loco parentis to the minor child, ^{T.S.C.} [REDACTED]. Grandmother is exempt from filing a report of intention to adopt. *See* 23 Pa. C. S. 2531(c).

III. Conclusions of Law

1. 23 Pa. C.S. § 2511(a)(1) provides:

§ 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 one 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.

Id. (emphasis added). *See also In the Interest of C.S.*, 761 A.2d 1197, 1201 (Pa. Super Ct. 2001).

2. When considering the six month period immediately preceding the filing of the termination petition, the Court should consider the entire background of the matter instead of mechanically applying the six month provision. *In re: B.N.M.*, 856 A.2d 847, 855 (Pa. Super. Ct. 2004), *appeal denied*, 872 A.2d 1200 (Pa. 2005), citing *In re: D.J.S.*, 737 A.2d 283, 286 (Pa. Super. Ct. 1999). Specifically, our Superior Court has provided the termination 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.

Id.

3. A parent's rights will not automatically be forfeited by failure of the parent to have contact with the child for a six month period. *Adoption of M.S.*, 664 A.2d

1370, 1373 (Pa. Super. Ct. 1995); *In re: K.C.W.*, 689 A.2d 294, 299 (Pa. Super. Ct. 1997).

4. When considering the statutory time frame,

the court must consider the barriers faced by parents to exercising their parental rights. The parent must exhibit reasonable firmness in attempting to overcome the barriers or obstructive behavior of others.

In re: K.C.W., 689 A.2d at 299.

5. In *Adoption of M.S.*, *supra*, our Superior Court noted:

where a parent makes *reasonable* attempts to overcome obstacles created by the party seeking to terminate parental right, a mere showing that the parent could conceivably have pursued legal action more promptly cannot justify termination of parental rights.

664 A.2d at 1374 (citations omitted) (emphasis in original).

6. Mother's incarceration alone does not create a substantial barrier for Mother's contact with ^{T.S.C.} [REDACTED].
7. Father's directive that Mother contact Grandmother regarding the child and his general non-responsiveness combined with Mother's periods of incarceration do not create a substantial barrier for Mother's contact with ^{T.S.C.} [REDACTED].
8. In this instance, Grandmother argues that Mother has evidenced a settled purpose of relinquishing her parental claim and has refused or failed to perform her parental duties.

9. In *In re: Burns*, 379 A.2d 535, 540 (Pa. 1997), our Supreme Court addressed what parental duties entailed; that Court provided:

[t]here 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 a 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 [of] 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 a 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.

Id. (citations omitted).

10. If the petitioning party proves that the statutory ground for termination has been met pursuant to 23 Pa. C.S. § 2511(a)(1), the Court must next consider the bond

between the child and the parent facing termination. *See* 23 Pa. C.S. § 2511(b); *In the Interest of C.S.*, 761 A.2d at 1202.

11. 23 Pa. C.S. § 2511(b) states:

(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) ..., 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.

Id.

12. 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.*, 761 A.2d 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. Ct. 2008)(citing *In Re: I.A.C.*, 897 A.2d 1200, 1208-09 (Pa. Super. Ct. 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. Ct. 1996), appeal denied, 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. Ct. 2007).

13. 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., 761 A.2d at 1202.

14. Generally, a petition to terminate a natural parent’s parental rights filed by one natural parent against another is cognizable only if the adoption of the child is foreseeable. *In Re: E.M.I.*, 57 A.3d 1278, 1285 (Pa. Super. Ct. 2012). Therefore, at the termination hearing, the petitioning parent must demonstrate that the planned adoption is in the child’s best interest and that a new parent-child relationship is foreseen. *Id.* at 1287.
15. The standard of review in involuntary termination of parental rights proceedings is clear and convincing evidence. *Adoption of M.S.*, 664 A.2d at 1373.

Specifically:

[i]n a proceeding to involuntarily terminate parental rights, the burden of proof is upon the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so. The standard of clear and convincing evidence is defined as testimony 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 at issue.

Id. at 1373 (citations omitted).

16. "[P]arental rights are not preserved... by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with his or her immediate physical and emotional needs."

In re Adoption of Godzak, 719 A.2d 365, 368 (Pa.Super.1998) (citation omitted).

17. The Court finds that Grandmother has established by clear and convincing evidence that Mother's parental rights should be involuntarily terminated pursuant to 23 Pa. C.S. § 2511(a)(1).

18. The Court finds that Grandmother has established by clear and convincing evidence that the developmental, physical, and emotional needs and welfare of T.S.C. [REDACTED] will be best served by terminating Mother's parental rights pursuant to 23 Pa. C.S. § 2511(b).

IV. Discussion

In this instance, the Court finds Petitioner has met her burden of clear and convincing evidence, thT Mother's parental rights should be terminated pursuant to

23 Pa. C. S. §2511 (a). Mother has both evidenced and settled purpose to relinquish her claim to the child and failed to perform parental duties.

Mother has completely failed to perform parental duties since January of 2009. Mother has not seen the child for approximately the same amount of time. Mother has not provided gifts or cards. Mother's attempts to contact Father were only made when she was released from prison. A parent cannot wait until a more convenient time to carry out their parental duties. Mother's only attempts were made at the times most convenient for her.

Mother's settled purpose to relinquish her claim is demonstrated by her inaction. Mother knew she had the ability to seek Court intervention but did not pursue any action. The address of paternal Grandmother and her child would have been of record with Court from the entering of the custody Stipulation on October 26th, 2010. Mother testified to her periods of incarceration by specifically indicating her commitment and release dates. Mother was unable to be as specific about the less than 10 times she has attempted to inquire about her son during the course of the 3 years prior to the filing of the Petition for Termination. During Mother's periods of incarceration, Mother only left one voicemail regarding her son.

Mother uses Father's unresponsiveness to her occasional messages as a roadblock to explain her failure to perform parental duties or negate the evidence of her settled purpose to relinquish her parental claim. Father's testimony that he directed Mother to speak to Grandmother is credible. Mother offered no evidence of her reasonable

attempts to overcome this "obstacle". The law requires more of a parent than to abandon all effort because a voicemail is not returned.

The Court must now turn to the "other considerations" to be considered in Termination. The Court finds Petitioner has met her burden of clear and convincing evidence, the Mother's parental rights should be terminated pursuant to 23 Pa. C. S. §2511 (b).

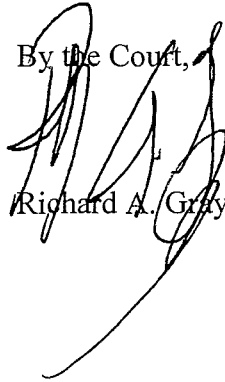
The Court finds that no bond exists between Mother and ^{T.S.C.} [REDACTED]. At the time of the hearing, ^{T.S.C.} [REDACTED] was five years old and had not seen his Mother since he was a few months old. ^{T.S.C.} [REDACTED] refers to his Grandmother as "Mommy". There would be no trauma to ^{T.S.C.} [REDACTED] should the parental rights of Mother be terminated. Termination of Mother's rights would not destroy an existing, necessary and beneficial relationship as there currently exists no relationship between Mother and ^{T.S.C.} [REDACTED]. The developmental, physical and emotional needs and welfare of the child would best be served by termination Mother's rights and allowing ^{T.S.C.} [REDACTED] to be adopted by his Grandmother.

Grandmother has demonstrated good cause why this adoption should proceed while natural Father maintains his parental rights. Grandmother has been the primary custodian of ^{T.S.C.} [REDACTED] for the majority of his life. Since the child's birth Grandmother has had her own periods of custody. Periods of the child's life, Father resided with Grandmother and ^{T.S.C.} [REDACTED]. Although there was not much evidence presented about Father's periods of incarceration, Father gave Grandmother sole legal and physical custody in October 2010. There was also testimony of Grandmother having custody during a period in which Father was on the run from law enforcement. Father moved out

and left the child with Grandmother in February of 2013. Grandmother has been the only constant parent in ^{T.S.C.'s} [REDACTED] life. Grandmother has certainly been ^{T.S.C.'s} [REDACTED] de facto mother and often his only parent.

Accordingly, the Court will enter the attached Decree.

By the Court,


Richard A. Gray, Judge

10-8-13

- cc. ✓ Meghan Young, Esquire
- ✓ Angela Lovecchio, Esquire
- ✓ Kathryn Bellfy, Esquire
- ✓ Gary Weber, Esquire
- Kathleen Engel, Secretary to Judge Gray

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LYCOMING COUNTY
2013 OCT 14 P 2:59
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