

IN RE: ADOPTION OF K.R.K.D.B. AND J'Q.M.B.  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch, Orphans Court Division  
Adoption Docket #107-2005, Volume 4, Page 280

*Involuntary Termination of Parental Rights; Refusal or Failure to Perform Parental Duties; Incarceration as an  
Obstacle in Maintaining Parent-Child Relationship;*

*Best Interests of the Child*

1. The standard of proof required in involuntary terminations proceedings must be at least clear and convincing evidence.
2. Parental rights may be involuntarily terminated pursuant to the Adoption Act, 23 Pa.C.S. § 2511(a)(2), when 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.
3. Where the parents have refused to complete requirements set before them to enable them to provide care for their children, or are without capacity and fail to establish contact with their children, the parents have caused their children to be without essential parental care.
4. Although incarceration of a parent will certainly impact a parent's ability to perform parental duties, and may in fact render a parent incapable of performing parental duties under subsection (a)(2), it is well established that incarceration alone is not sufficient to support termination. In re Involuntary Termination of Parental Rights to E.A.P., 2008 PA Super 24 (Pa. Super. 2008).
5. Similarly, a parent's incarceration does not preclude termination of parental rights if the incarcerated parent fails to utilize given resources and to take affirmative steps to support a parent-child relationship. In re D.J.S., 737 A.2d 283 (Pa. Super. 1999). Parental responsibilities are not tolled during a period of incarceration.
6. Where the incarcerated mother did not maintain a place of importance in the children's lives, initiated no contact with the children until a goal change was initiated by Franklin County Children and Youth Services, and failed to complete many services that were directed for her participation and requirements to enable her to provide care for the children upon her release from incarceration, she failed to perform her parental duties.
7. Parental rights may be involuntarily terminated pursuant to 23 Pa.C.S. § 2511(a)(5) when the child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six (6) months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and the termination of the parental rights would best serve the needs and welfare of the child.
8. Where the children have been removed from parental care for more than one year, and the statutory time has been satisfied, the mother has failed to comply with any of the goals set for her and the father remains incarcerated and unable to provide care for the children, and neither parent has complied with the recommendations of the agencies involved to establish any place of importance in the children's lives, and the Guardian ad Litem believes it is in the best interest of the children to terminate the parental rights, said rights will be terminated.
9. Parental rights may be involuntarily terminated pursuant to 23 Pa.C.S. § 2511(a)(8) when the child has been removed from the care of the parent by the court or under a voluntary agreement with an agency,

twelve (12) months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

10. Statutory and case law are clear that it is anticipated that children will reach a level of permanency from the time they come into care within eighteen (18) months. Furthermore, finalizing an adoption and having the children in a permanent placement is also contemplated at that time.

11. Where almost 18 months have elapsed since the children were placed in custody, the mother has not developed any significant relationship with the children due to their placement at such a young age, and the unsatisfactory conditions requiring the placement remain unchanged, it is in the best interest of the children to terminate the parental rights.

Appearances:

Anne S. Johnson, Esquire, *Counsel for Natural Mother*

Cindy Lou Franke, Esquire, *Counsel for Natural Father*

Brian C. Bormman, Esquire, *Counsel for Franklin County Children and Youth Services*

Mahesh K. Rao, Esquire, *Guardian Ad Litem*

#### OPINION

Van Horn, J., March 31, 2008

#### Procedural History

1. This matter came before the Court due to the filing of a Petition for Involuntary Termination of Parental Rights regarding K.R.K.D.B. and J'Q.M.B. (hereinafter "the children") by Franklin County Children and Youth Services (hereinafter "FCCYS") on November 15, 2007. The legal grounds for the involuntary termination of the parental rights of both parents as to the children were stated as the following:

a. 23 Pa.C.S. §2511(a)(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.

b. 23 Pa.C.S. §2511(a)(5) – The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six (6) months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

c. 23 Pa.C.S. §2511(a)(8) – The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, twelve (12) months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

2. After proper notice to both parents of the children, the Court held a hearing on January 18, 2008. The natural mother of the children is C.D. ("Mother"), and the natural father of the children is L.B. ("Father"). At the hearing, Mother participated by videoconference and her counsel was present in the courtroom. Father participated telephonically and his counsel was also present in the courtroom.

3. At the conclusion of the hearing, the Court found that clear and convincing evidence was presented in order to declare that Mother's and Father's rights would be terminated.

4. Mother filed a Notice of Appeal from this decision on February 8, 2008.

5. On February 8, 2008 this Court entered an Order directing Mother to file a Statement of Matters Complained of on Appeal ("Statement") within twenty-one (21) days of this Order.

6. Mother filed her Statement on February 25, 2008.

7. This Court now responds by way of Opinion pursuant to Pa.R.C.P. 1925(a).

### Factual Background

1. The children involved in this matter, K.R.K.D.B. and J'Q.M.B, were born on July 7, 2005 and July 31, 2006 respectively. K.R.K.D.B. was born in Dauphin County and J'Q.M.B. was born in Franklin County.

2. FCCYS has been involved with the family since July 2005, shortly after the birth of K.R.K.D.B. The initial referrals were due to concerns regarding Mother's cognitive ability to care for her child along with concerns about her mental health and substance abuse.

3. At the time of initial contact, the agency did not remove K.R.K.D.B. immediately from the home but rather recommended The Parents' and Kids' Program to provide Mother with parenting education and support. She was opened with the program on August 16, 2005.

4. During the agency's work with the family, circumstances deteriorated. Concerns arose that K.R.K.D.B. was not receiving proper medical attention or caretaker supervision, and also that the home environment was unsanitary.

5. The agency continued to try to work with the family, providing applications for benefits through the Franklin County Assistance Office, Public Housing and Section 8 applications, and phone numbers to the Salvation Army and Homeless Assistance Program. K.R.K.D.B. was also being tracked through Early Intervention.

6. Despite the efforts of the agency, the relationship with the family deteriorated due to the caseworker's inability to contact the family.

7. On July 14, 2006, the caseworker assigned to the family was informed that Mother had been incarcerated in Franklin County Prison. FCCYS and the caseworker immediately began working with Father and the rest of the family, developing a safety plan to ensure K.R.K.D.B. would have a competent caretaker at all times, and that his growing medical needs would be met.

8. On July 31, 2006, Father informed the agency that Mother had been admitted to Chambersburg Hospital to have a scheduled caesarian section. The caseworker went to the home to assure K.R.K.D.B.'s well-being, and to inquire about the family's plan to care for him and the newborn.

9. On that home visit, the caseworker found that K.R.K.D.B. had been left in extremely unsanitary conditions with a caretaker who had significant developmental delays and who could not properly tend to the child's medical needs.

10. The agency determined rather quickly that it could not assure that K.R.K.D.B. would be safe in various home environments despite the services being provided. Therefore, on July 31, 2006, a Verbal Emergency Order was obtained and K.R.K.D.B. and the newborn (now J'Q.M.B.) were temporarily placed in the legal custody of FCCYS with placement in foster care provided by the Children's Aid Society of Franklin County.

11. At the time of the children's placement, FCCYS had been providing services to the family to help with the care and safety of K.R.K.D.B. for approximately twelve (12) months with rapidly deteriorating conditions and no signs of improvement.

12. The children have continuously been in placement since July 31, 2006.

13. Mother has been incarcerated on drug charges since July 2006 and was sentenced to a minimum of 2 years in prison. She has a history of substance abuse and mental health issues.

14. Despite the efforts and recommendations of the agency prior to incarceration, Mother had not

completed drug and alcohol counseling, maintained stable housing that is suitable for the children. Since incarceration she has not regularly visited with the children or regularly maintained contact with the children.

15. Upon her release from prison, Mother will need a significant amount of time to secure appropriate housing, enroll in drug and alcohol and mental health treatment, and demonstrate a stable lifestyle.

16. Mother did not provide any letters or cards to the children for nearly one year after their placement. After the June 7, 2007 FCCYS Report to Court which stated that the agency would petition for a change of goal at the next hearing if significant progress had not been made she did send cards and letters.

17. Father has a history of alcohol abuse and was ordered to participate in drug and alcohol counseling. He was unsuccessfully discharged from counseling due to missed sessions and coming to sessions smelling of alcohol.

18. Father has not had stable housing nor has he maintained stable employment since the children's placement.

19. Father has been incarcerated at Franklin County Jail five times since the children's placement. His charges include disorderly conduct, trespassing, and failing to appear in court for a traffic violation.

20. Father is presently incarcerated at SCI Camp Hill for Criminal Trespass and is sentenced for a period of 9 months to 36 months, effective December 5, 2007.

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#### Discussion

The standard of proof in involuntary termination proceedings was determined by the U.S. Supreme Court as a "clear and convincing evidence" standard in Santosky v. Kramer, 455 U.S. 745 (1982). It is well established that this high burden of proof lies with the party seeking termination. See generally In the Matter of the Adoption of C.A.W. and A.A.W., 683 A.2d 911 (Pa. Super. 1996). Therefore, in this termination case, FCCYS held the burden to prove the grounds for involuntary termination by the clear and convincing standard. At the conclusion of the hearing, the Court felt confident that FCCYS met their burden and terminated both Mother's and Father's rights. Despite the clear and convincing evidence, Mother now lists three Court errors in her filed Statement, alleging that the termination of her parental rights was improper. [1]

The first two issues in the Statement allege a similar error: That FCCYS did not meet its burden of proving by clear and convincing evidence that Mother cannot or will not be able to 1) remedy the conditions which caused the children to be without parental care and 2) remedy the conditions which caused the children to be removed from the home. Mother claims that she was not given the opportunity to complete the ongoing recommendations of FCCYS and the Court.

Although not referred to specifically in Mother's Statement, the Court can infer that Mother claims that she has not been given the opportunity to follow the recommendations of FCCYS and the Court because she has been incarcerated on drug-related charges throughout the entire time the children have been in care. Although incarceration will certainly impact a parent's ability to perform parental duties, and **may** in fact render a parent incapable of performing parental duties under subsection (a)(2), the Court recognizes that incarceration alone is not sufficient to support termination under any subsection. In re Involuntary Termination of Parental Rights to E.A.P., 2008 PA Super 24 (Pa. Super. 2008)(citing In re C.S., 761 A.2d 1197, 1201 (Pa. Super. 2000)(en banc); In re I.G., 2007 PA Super 394 (2007); In re Adoption of C.L.G., 2007 PA Super 355 (2007)). Similarly, a parent's incarceration does not preclude termination of parental rights if the incarcerated parent fails to utilize given resources and to take affirmative steps to support a parent-child relationship. In re D.J.S., 737 A.2d 283 (Pa. Super. 1999). "Parents are required to make diligent efforts towards the 'reasonably prompt assumption of full parental responsibilities'." In re Involuntary Termination of Parental Rights to E.A.P., 2008 PA Super 24 (Pa. Super. 2008)(quoting, in part, In re A.L.D., 797 A.2d 326, 340 (Pa. Super. 2007)).

Mother has not visited the children since they came into care due to her incarceration. At the same time, she did not send any letters or cards to the children until after the report from FCCYS was issued in June of 2007, petitioning for a goal change at the next hearing if significant progress had not been made. During the termination hearing, documentation was presented to the Court, showing that Mother had completed a 10-week parenting class. While this is commendable, Mother still had not completed the other

services that were directed for her to participate in, including drug and alcohol counseling, and had yet to provide proof that she has a stable housing environment to return to upon her release from incarceration. In fact, Mother stated that upon her release, she intends to return to the same unsanitary and unsatisfactory home from which the children were removed. This is the home of Mother's grandmother, the children's great grandmother, who has not been cooperative with the agency in any way since the time of the children's placement. The caseworker testified that there are concerns as to the number of different people residing in the home, as well as the conditions of the home, which FCCYS was unable to evaluate as they were refused entry into the home on their last visit. Additionally, when asked how long it would take for Mother to have a stable home environment that would be sufficient for her and the children and to obtain employment to support the family, she testified that it would take another six to nine months just to find a job. Mother was not working prior to being incarcerated; her last period of employment was in 2004.

As previously mentioned, incarceration alone should not be a cause of termination of parental rights. It is permissible, however, for a Court to infer parental deficits from the events that might have led to incarceration in the first place, as well as the likelihood of those deficits being remedied within a reasonable amount of time.

Here, despite Mother's recent compliance with the recommendations of FCCYS in completing parenting classes and other programs while incarcerated, she will still need considerable time upon her release, perhaps an additional six to nine months by her own testimony, in order to remedy the problems that caused the children to be placed in foster care. Statutory and case law are very clear that it is anticipated that children will reach a level of permanency from the time they come into care within eighteen (18) months. Furthermore, finalizing an adoption and having the children in a permanent placement is also contemplated at that time. At the time of this hearing for termination, the children had been in placement for almost 18 months. Before placement, FCCYS was attempting to work with Mother in her home for the first year of K.R.K.D.B.'s life. Despite that intensive service in the home, K.R.K.D.B. was removed around the time that his youngest brother, J'Q.M.B. was born. Despite that intensive involvement, there remained concerns about K.R.K.D.B.'s health and safety.

Even if presented with the best of circumstances, in that Mother had housing and employment upon her release from incarceration, the Court cannot overlook Mother's long-standing history of incapacity, as well as the ongoing circumstances which caused the children to come into placement in the first place. "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 his or her physical and emotional needs." *In re Involuntary Termination of Parental Rights to E.A.P.*, 2008 PA Super 24 (Pa. Super. 2008)(quoting *In re B., N.M.*, 856 A.2d 847, 855 (Pa. Super. 2004)). Therefore, the Court believes that FCCYS has sustained its burden with respect to Mother's first two claims of error.

Mother's third and final claim is that the Court erred in determining that termination of Mother's parental rights would best serve the needs and welfare of the children. Mother relies on the fact that FCCYS did not provide expert testimony regarding the effect on the children of termination of Mother's parental rights as support for her claim.

Mother testified that she feels the children will know her. This Court believes that this is an unrealistic expectation, especially with respect to J'Q.M.B. J'Q.M.B.'s last contact with Mother, by her testimony, was when he was only eight (8) days old. He is now one and a half years old. K.R.K.D.B.'s last contact with Mother was when he was approximately thirteen (13) months old. Therefore, the Court can certainly conclude that there would be an extensive period of time necessary to develop a relationship that does not exist at this time between Mother and the children, which would go against all of the necessary permanency determinations that these children deserve after almost eighteen (18) months in the foster care system. Even though Mother has participated in various programs, none has fostered a continuing, close relationship with the children. Echoing the sentiment of the Superior Court in *C.L.G.*, 2007 PA Super 355, this Court will not subordinate indefinitely these children's need for permanence and stability to Mother's claims of progress and hope for the future.

This Court suggested that termination would not be a detriment to the children, and remains confident in that determination. Due to the age of the children and the extensive period of time they have been separated from Father and Mother due to periods of incarceration, it is difficult to find even a minimal bond between the children and their parents. The children are in a pre-adoptive foster home and do not have the need for any special services in this secure and loving environment. Having found grounds for termination under several subsections of 23 Pa.C.S.A. §2511(a), we conclude that the other considerations identified in 23 Pa.C.S.A. §2511(b) require termination to best meet the developmental, physical and emotional needs and welfare of the children given the totality of the circumstances that brought the children into care and Mother's incarceration for their entire placement.

FCCYS has exhausted all the resources for Mother to work towards correcting the deficiencies in

her home that existed prior to the children's placement. During the year she spent with K.R.K.D.B. before his placement, Mother failed to perform the necessary parental responsibilities. Her difficulties with unstable and unsuitable housing, lack of financial resources and criminal charges were all self-induced. K.R.K.D.B. was removed after a year of intensive services in Mother's home and his brother was placed upon discharge from the hospital. Mother was incapable of caring for her sons prior to incarceration and remained incarcerated at the time of the hearing. Permanency for the children will not be delayed where Mother offers only a hope for the future in light of her known parenting deficiencies in the past.

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### Conclusion

The appellate standard of review in cases of involuntary termination of parental rights is limited to determining whether the lower court's findings are supported by competent evidence. In Re L.A.G., 415 A.2d 44 (Pa. 1980). In making this determination, the court is obliged to accept as true "all the evidence supporting the findings and all reasonable inferences therefrom." In Re D.K.W., 415 A.2d 69, 71 (Pa. 1980). Absent an abuse of discretion, the findings of this Court must be upheld.

This Court is confident that the record in this case reflects that Mother has failed or has refused to perform her parental duties with no justifiable obstacles presented, and the best interests of the children are served by the termination of parental rights. Moreover, this Court is confident that the statutory requirements for involuntary termination were fully met by the presentation of evidence by FCCYS. Therefore, it is respectfully requested that this Court's Order of January 18, 2008 be affirmed for the reasons stated in the said Order and for the reasons stated herein.

### ORDER OF COURT

And now this 31st day of March 2008, pursuant to Pa.R.A.P. 1931(c), it is hereby ordered that the Clerk of Courts of Franklin County shall promptly transmit to the Prothonotary of the Superior Court the record in this matter along with the attached Opinion *sur* Pa.R.A.P. 1925(a).

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[1] As the only appeal filed in this case was on behalf of Mother, this Opinion will address the reasons supporting termination of parental rights only as they pertain to Mother's circumstances.