

Franklin County Legal Journal

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In re: Adoption of J.T.P.

IN RE: ADOPTION OF J.T.P., BORN AUGUST 30, 1997 Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Orphans' Court Division Docket No. 65-Adopt-2011

*Dependency, Permanency, Termination of Rights; Factors; Efforts to Resume Custody or Communicate; Diligence; Excuses; Rehabilitation*

1. Termination of parental rights is controlled by statute, the grounds for which are narrowly and clearly defined. In termination cases, the burden rests upon the petitioner to prove by clear and convincing evidence that the asserted grounds for seeking the termination of parental rights are valid.
2. There is a two-part inquiry in termination cases. Initially, the focus is on the conduct of the parent. The party seeking termination must prove by clear and convincing evidence that the parent's conduct satisfies the statutory grounds for termination delineated in Section 2511(a). Only if the court determines that the parent's conduct warrants termination of his or her parental rights does the court engage in the second part of the analysis pursuant to Section 2511(b): determination of the needs and welfare of the child under the standard of best interests of the child.
3. Under Section 2511(a)(1), the Court may terminate parental rights where the parent either demonstrates a settled purpose to relinquish parental claim or alternatively fails to perform parental duties for at least six months prior to the filing of the termination petition.
4. 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.
5. Father has offered J.T.P. no demonstrations of love, no protection, no guidance, and no emotional support for a period far in excess of six (6) months. There has been no affirmative performance of the parental role, and Father has failed to perform parental duties.
6. Contribution to the support of a child as required by a court order, without more, is insufficient to preserve parental rights.
7. A parent cannot claim relief from the responsibility of parenthood due to an inability to fulfill that function.
8. Where a parent seeks treatment for an addiction, they may not totally absent themselves from the lives of their children and later point to participation in a rehabilitation program as a valid reason for neglecting parental duties.
9. When separated from their child, it is incumbent upon a parent to maintain communication and association, which requires an affirmative demonstration of parental devotion.
10. Father, who ceased all communication with the Child as he sought treatment for his addiction to alcohol, and acceded to the Child's request not to contact him, did not exert effort to take and maintain a place of importance in his son's life. Father's efforts at rehabilitation do not toll parental responsibilities.

Appearances:

Michael B. Finucane, Esq., *Attorney for C.T.P. Jr., the Natural Father*

M. Teri Hall Stiltner, Esq., *Guardian Ad Litem for J.T.P., the Child*

Janice M. Hawbaker, Esq., *Attorney for Petitioners L.A.D., the Natural Mother, and W.H.D., Her Husband*

DECREE

Van Horn, J., April 27, 2012

April 27, 2012, the above-named matter having been heard in a private hearing on March 29, 2012, at 9:00 a.m., and it appearing to the Court that the facts set forth in the petition are true and correct, and that service of the notice of the foregoing private hearing, together with a copy of the Petition for Involuntary Termination of Parental Rights has been

made upon C.T.P., Jr., Natural Father; Michael B. Finucane, Esquire, Attorney for the Natural Father; and M. Teri Hall Stiltner, Esquire, Guardian Ad Litem for the Child, in the manner required by this Court, and as evidenced by an Affidavit of Service filed in this matter by Janice M. Hawbaker, Esquire, Attorney for the Petitioners, L.A.D., Natural Mother, and W.H.D., her husband; the Court makes the following findings of fact and conclusions of law:

#### Findings of Fact

1. The Petitioners, L.A.D. and W.H.D. residing at xxxx xxxxxxxxxxxx Road, xxxxx, Franklin County, Pennsylvania, have the care and custody of J.T.P., a minor male child born August 30, 1997, in Montgomery County, Philadelphia, Pennsylvania. J.T.P. was born to L.A.D. and C.T.P., Jr.
2. That J.T.P. [hereinafter "the Child" or "J.T.P."], is a Caucasian male child who is fourteen (14) years old, having been born on August 30, 1997, in Montgomery County, Pennsylvania. He has no religious affiliation.
3. That the mother of J.T.P. is L.A.D. [hereinafter "Mother"], her address being xxxx xxxxxxxxxxxx Road, xxxxx, Pennsylvania xxxxx; she is forty (40) years of age, having been born on April 5, 1972, in Chambersburg, Pennsylvania; her race is Caucasian; she is currently married; she was married at the time of the birth of the child and during one year prior thereto; and she has no religious affiliation.
4. That the natural father of J.T.P. is C.T.P., Jr. [hereinafter "Father"], whose current address is xxxx xxxxxxxxxxxx Road, xxxxxxxxxxxxxx, Pennsylvania xxxxx; he is forty-one (41) years of age, having been born on October 13, 1970; his race is Caucasian; he is currently divorced; he was married at the time of the birth of the child and during one year prior thereto; and his religious affiliation is Roman Catholic.
5. The legal ground for the involuntary termination of the parental rights of C.T.P., Jr. is: 23 Pa. C.S. §2511 (a)(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 the child or has refused or failed to perform parental duties.
6. The facts which support said grounds for termination are as follows:
  - a. Following their separation, Mother and Father shared custody of the Child and his older brother, N.D. [hereinafter collectively "the Children" or "the boys"], while still residing in Philadelphia. In late 2002, Mother obtained primary physical custody, with Father having supervised visitation every other weekend.
  - b. In July of 2002, Father received a DUI after arriving at Mother's apartment intoxicated wishing to obtain custody of the Children. When Mother refused to allow him to take the Children by reason of his inebriation, he began screaming and cursing, and Mother eventually called the police.
  - c. In 2003, Father was jailed for five (5) months after being involved in a hit and run while driving on a suspended license. While incarcerated he called Mother's home collect, which she accepted, and wrote letters.
  - d. Following his release, Father wished to reestablish contact with his children, receiving physical custody on alternating weekends pursuant to an Order by the Court of Common Pleas in Philadelphia. Father exercised these periods of custody sporadically. Father attempted rehabilitation several times during this period, and was also hospitalized with alcohol poisoning several times.
  - e. In July of 2004, Father took the Children camping at Raystown in Huntingdon County. The Children reported to Mother that their Paternal Grandmother had taken over the care of them after Father became drunk and unable to supervise them.
  - f. In August of 2004, Mother relocated to Chambersburg, wishing to be near the support of her family, as Father did not pay child support. Upon her return, Mother contacted Father's family and took the Children for outings with their paternal relatives.
  - g. Father was arrested for a second DUI in February of 2005, serving jail time later the same year.

- h. In April of 2005, Father called Mother requesting time with the children, and also sent letters. Later that year, after Mother filed a Complaint for Custody, Father obtained supervised visitation during the daytime hours on alternating Saturdays and Sundays. The Children were very resistant to spending time with Father, but Mother encouraged them, telling the boys she did not want to hear any negative comments and forcing them to spend time with Father.
- i. Father was incarcerated in March of 2006 for violating probation by imbibing alcohol.
- j. In early 2006, Mother and W.H.D. began a romantic relationship, moving in together later the same year.
- k. The Children testified that during their visitation periods with Father, they would not do any activities, rather staying in the house all weekend sitting on the couch watching television.
- l. Mother filed for support in January of 2007, which has been paid from Father's social security disability payment thereafter via wage attachment in the amount of one hundred and sixty dollars (\$160.00) per month. The Child also receives a direct benefit paid by reason of Father's disability, in excess of nine hundred dollars (\$900.00) per month.
- m. In early July of 2007, after Mother dropped the Children off at Father's home, the boys ran away and were missing for several hours. Mother later located the two in a corn field. The boys told Mother they ran away because they were scared of Father and did not wish to return to his home. This was the last time Father had physical custody of either the Child or his older brother.
- n. Following the incident, on July 16, 2007, Mother filed a Complaint for Custody.
- o. After the resumption of the custody action, the Children began counseling with Deanne Blankenship Sanders with the aim of reconciliation with Father. Sanders recommended that Mother allow the Children to express their negative feelings about Father rather than telling them she did not wish to hear anything poor about the relationship. Mother was advised to let the Children know she heard them, and listen to their feelings. Sanders further advised Mother to stop forcing the Children to exercise periods of custody with their Father. The counseling eventually ended, the counselor concluding reconciliation was not currently possible.
- p. Father called Mother's home at some point following resumption of the custody action in 2007, and both the Child and N.D. stated they did not want Father to call again and did not wish to visit.
- q. Father sent cards with gift cards inside to the Children for Christmas in 2007. The Child and his brother threw the cards and the gift cards into the fireplace.
- r. In March of 2008, the family was ordered to undergo counseling with Barbara Dickey. Dickey met with Father and the boys that month in an unsuccessful session. Thereafter, Mother and the Children were to begin counseling, working up to a joint appointment with Father. Dickey met with Mother and the Children twelve (12) times, scheduling a joint session with Father in May of 2008. Father did not appear, Dickey testifying the Children were visibly disappointed. Mother and the Children later learned Father had relapsed, and was hospitalized with alcohol poisoning. Dickey authored a letter to the Court at that time stating reconciliation was not currently possible due to Father's continuing alcoholism.
- s. In preparation for a custody hearing in November of 2008, Mother obtained hospital records demonstrating Father's drinking continued, despite his consistent assertions of sobriety for the past several years. Indeed, Father was hospitalized for alcohol related reasons on eight (8) occasions in 2007.

t. In November of 2008, a Custody Order was entered declining to require visits between Father and the Children due to Father's continued alcoholism. However, the Court did require Mother, W.H.D. and the Children to resume counseling with Barbara Dickey, and to hold sessions with Father once Dickey so recommended. The Order provided the Court intended to restore contact between Father and the Children within one hundred and twenty (120) days, on the recommendation of the counselor and as requested by Father. No action was taken by Father to request resumption of visitation. Father's custodial periods were not reinstated.

u. Mother and W.H.D. met with Dickey, as did the Children, attending sessions as required by the counselor. In May of 2009, Dickey, in a letter to the Court, opined reconciliation was still not currently possible due to Father's issues with alcohol and his need to work on those issues prior to any reconciliation.

v. In May of 2010, Dickey authored a letter to the Court, stating reconciliation was not currently possible due to Father's alcoholism.

w. For Christmas of 2010, Father sent the Children a card. The card was printed off the internet and written on in crayon. J.T.P. and N.D. burned the card in a fire.

x. In February of 2011, Dickey sent a letter to the Court advising that reconciliation between Father and the Children should begin. Dickey had not spoken to Mother or the Children for more than two (2) years. Upon receipt of the letter, Judge Shawn D. Meyers, newly assigned to the case, issued a Rule to Show Cause upon the parties, as to why a status hearing should not be held in the matter. Mother opposed the scheduling of a conference, while father submitted a brief in favor. By Order dated April 12, 2011, the Court declined to schedule the matter for hearing given the lapse of time between the last Order of Court in November of 2008 and the current court action in 2011. Judge Meyers further directed Father to file a petition to modify custody if he desired to pursue the matter.

y. Father failed to proceed in the custody matter. At hearing, Father testified he wished to give the boys "time and space" and had put the matter "in God's hands."

z. On his eighteenth birthday, N.D. asked to be adopted by W.H.D. as a birthday present, consent from Father not being legally necessary upon his attaining majority. The adoption was finalized in March of 2012. N.D. did not notify Father of his adoption. N.D. has changed his surname.

aa. The Child has not spoken to Father for more than two (2) years, testifying he has no fond memories of the time they spent together and that the two have no relationship. The Child testified he has given Father many second chances, and has no interest in having any contact.

7. Pursuant to 23 Pa. C.S.A. Section 2511(b), the best interest of the Child shall be served by the termination of the parental rights of C.T.P., Jr. as follows:

a. J.T.P. has chosen to call W.H.D. "dad" for five (5) years, beginning when he was nine (9) years old. The Child looks to W.H.D. for guidance, discipline and affection. Mother testified that W.H.D. meets the Child's physical, emotional and psychological needs in place of Father.

b. W.H.D. and the Child do many activities together, especially enjoying outdoor activities including hunting, fishing, trapping and caring for domestic animals.

c. W.H.D. testified that the Child is generally very shy and quiet, N.D. testifying J.T.P. is introverted but has begun to speak more in the last two years. W.H.D. testified the Child opens up to him when they are together, and "talks and talks."

d. W.H.D. and L.A.D. have a two (2) year old child, B.D., the Child's half-sibling, with whom he gets along well.

e. Mother testified that because N.D. has the W.H.D.'s surname, as does B.D., the Child is the only one in the home with a different last name

f. The Child has no relationship with Father or with any members of Father's family. Prior to the hearing on the Petition, J.T.P. had not seen his paternal grandmother for more than two (2) years. He did not greet her outside the courtroom. J.T.P. attends school with his paternal cousins, but does not greet them in the halls or have any familial relationship with them.

g. The Child has developed a relationship with W.H.D.'s family, calling W.H.D.'s parents "nan" and "pap," and viewing them as his grandparents.

h. The Child wishes to be adopted by W.H.D., and feels as though W.H.D. has been his real father for many years. The Child testified that adoption would help him emotionally.

8. C.T.P., Jr., is not entitled to the benefits of the Servicemembers Civil Relief Act of 2003 (50 U.S.C. App. 501 et seq.).

9. The Child is not an "Indian Child" subject to the protections of the Indian Child Welfare Act.

10. L.A.D. and W.H.D. consent to accept custody of J.T.P. until such time as the child is adopted.

11. Notices required per Act 101 of 2010 (23 Pa. C.S. §§2731-2742) have been served on both parents and the child as evidenced by the Affidavit of Service filed in this matter.

#### Discussion

This matter arises from years of failure to perform parental duties and the total destruction of a parent-child bond, after Father consistently chose his relationship with alcohol over his relationship with his children. It is the sad culmination of a child's repeated disappointments and emotional turmoil, and Father's failure to take action to preserve his parental role. Faced with his son's adamant desire for adoption by the man who acted as a parent in his absence, Father argues that the payment of support under a court order constitutes sufficient performance of parental duties to forestall the termination of his rights. Father further argues the fact of his alcoholism, Mother's obstructionism, and his son's resistance to having contact with him should excuse the failure to perform any parental duties since 2008.

Termination of parental rights is controlled by statute, the grounds for which are narrowly and clearly defined. See 23 Pa. C.S.A. §2511. In termination cases, the burden rests upon the petitioner to prove by clear and convincing evidence the asserted grounds for seeking the termination of parental rights are valid. See In re T.D., 949 A.2d 910, 914 (Pa. Super. Ct. 2008). The standard is well defined:

The standard of clear 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. It is well established that a court must examine the individual circumstances of each and every case and consider all explanations offered by the parent to determine if the evidence in light of the totality of the circumstances clearly warrants termination.

Id. at 914-15 (citation and quotation omitted). The inquiry of the Court in such cases is two-fold:

Initially, the focus is on the conduct of the parent. The party seeking termination must prove by clear and convincing evidence that the parent's conduct satisfies the statutory grounds for termination delineated in Section 2511(a). Only if the court determines that the parent's conduct warrants termination of his or her parental rights does the court engage in the second part of the analysis pursuant to Section 2511(b): determination of the needs and welfare of the child under the standard of best interests of the child. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child, with close attention paid to the effect on the child of permanently severing any such bond.

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

Instantly, the Petition was brought under Section 2511(a)(1), which provides: 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.

23 Pa. C.S.A. §2511(a)(1). Under this Section, the Court may terminate parental rights where the parent either "demonstrates a settled purpose to relinquish parental claim" or alternatively "fails to perform parental duties for at least six months prior to the filing of the termination petition." In re K.Z.S., 946 A.2d 753, 758 (Pa. Super. Ct. 2008). The six (6) months immediately prior to the filing of the petition is most critical, but the Court must also consider the whole history of the case, and all explanations offered by the parent, to determine if the totality of the circumstances warrants termination. See id.

Father has not had in-person contact with the Child since 2007, and the two have not spoken on the telephone since 2008. Father did send birthday and Christmas cards in 2008, which J.T.P. threw into the fire, thereafter telling Father not to continue sending gifts. Father continued to send cards in 2009, and a Christmas card in 2010. Since that time, Father has not had physical contact with the Child, spoken to the Child, or sent any letters, cards or gifts to the Child.<sup>[1]</sup> No one has contacted the Child on Father's behalf. Father has not contacted Mother to inquire about the Child's well-being. Father has not been involved in the Child's schooling or activities. Represented by counsel, Father has not elected to pursue custody through legal action. Since December of 2010, it seems, Father has been waiting for the Child to suddenly change his mind and desire contact with him, and has not acted affirmatively in any manner to maintain the parent-child relationship.

The concept of parental duty is not easily defined, but in legal terms has been well explicated. Our Supreme Court has explained:

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 ... parental obligation is a positive duty which requires affirmative performance.

In re Burns, 379 A.2d 535, 540 (Pa. 1977). Father has offered J.T.P. no demonstrations of love, no protection, no guidance, and no emotional support for a period far in excess of six (6) months. There has been no affirmative performance of the parental role. The evidence is clear and largely uncontroverted that Father has failed to perform parental duties.

Father argues his payment of support for the benefit of the Child constitutes performance of parental duty, and should foreclose the termination of his parental rights under Section 2511(a)(1). Indeed, Father does pay financial support for the Child, and has since Mother filed an action against him in January of 2007. As Father receives disability income, the Child also receives a benefit from Social Security on his behalf. Father has made much of these continuing payments. Yet the support paid is solely by virtue of a Court Order, via wage attachment, Mother receiving nothing for the Children's benefit prior to commencing an action against Father. Further, our appellate courts have clearly decided that "it is not enough to contribute to the support of a child as required by a court order." In re Q.J.R., 664 A.2d 164, 165 (Pa. Super. Ct. 1995). Children need more than simply a benefactor; a parent must "take and maintain a place of importance in the child's life." Id. Father has not acted, and therefore has not maintained a parent-child relationship with his son. Notwithstanding the support paid on his behalf, for a period far in excess of six (6) months, Father has failed to perform his parental duties.

This does not end the Court's inquiry, however. The Court must consider Father's explanation for his omission, to determine whether the totality of the circumstances clearly warrants termination. Indeed, Father argues that his alcohol addiction, Mother's obstructive conduct, and the Child's refusal to continue a relationship with Father, should excuse his failure to perform parental duties and foreclose termination of his parental rights. The Court will consider each argument in turn.

Father has abused alcohol for many years. As early as 2002, Father's addiction began to affect his relationship with his children, leading to his arrest on an evening he was to obtain custody of the boys. Since that time, Father has been repeatedly jailed for alcohol related offenses, and violations of supervision related to alcohol use. These stints of incarceration have adversely affected the parent-child relationship, as Father would disappear for several months at a time into the penal system. Father has also been repeatedly hospitalized for alcohol poisoning, causing him to miss custodial periods and counseling sessions, and further alienating him from his children. Since 2008, Father has purportedly been engaged in seeking and maintaining sobriety, a task that he maintains has been so arduous as to excuse him from the performance of parental duties while engaged in treatment. Indeed, his counselor, Barbara Dickey, similarly argued that obtaining treatment for his addiction explains and excuses his absence from J.T.P.'s life.

Yet the law is clear that a parent cannot “claim relief from the responsibility of parenthood due to an inability to fulfill that function.” Q.J.R., 664 A.2d at 166. The Superior Court has stated:

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 his or her physical and emotional needs.

In re B., N.M., 856 A.2d 847, 855 (Pa. Super. Ct. 2004).

While Father struggled with his alcoholism, the Child continued to grow and to require nurturance, care, attention and stability. See Q.J.R., 664 A.2d at 166. Indeed, these things were provided by W.H.D., whose fulfillment of the parental role prevented the Child from suffering “irreversible damage” by reason of Father’s neglect. Cf. id. There is no legal requirement, or, indeed, any possible manner, for the Child to cease growing and requiring parental care while Father worked to obtain his sobriety. While Father waited for a more suitable time to undertake the parental role, others provided for the Child’s needs, and the parent-child relationship deteriorated.

In Q.J.R., a mother facing termination argued that her drug addiction was an impediment to carrying out her parental duties. See id. In that case, though the mother did not communicate with her child for more than a year, she maintained her effort to complete treatment should be considered reflective of a continuing desire to remain a part of her child’s life. See id. The Superior Court rejected her argument, stating:

We will not ascribe some talismanic quality to the appellant’s efforts to rid herself of an insidious drug addiction ... The appellant admitted that her *main* concern was to overcome her addiction, never giving any consideration to the impact of her absence or lack of communication upon the child ... [T]here is no indication that the minor-child ... either caused or contributed to the appellant’s drug problem, nor is there any proof that indirect communication (either by letters or cards) with the child would have had a deleterious effect upon the appellant’s efforts to control her addiction ... She chose to distance herself from [the child] for an inordinate period of time without advising anyone of her whereabouts or intentions regarding [the child]. This behavior would not be condoned in any parent, and it will not be sanctioned in someone dealing with a chemical dependency.

See id. at 466-67.

Instantly, Father chose to totally absent himself from the lives of his Children while attempting to obtain treatment. His counselor testified she elected to stop joint counseling sessions with Father and the Children to work solely with Father to discover the root of his alcohol abuse and work toward a cure. Yet this manner of proceeding did not require Father cease all communication with his Children. Father could have mailed letters, continued to send cards and gifts to the Child, placed telephone calls to Mother to inquire about his well-being, and involved himself in school activities. Father did none of these things, his main concern being his recovery rather than his relationship with the Children. While necessary and laudable, engaging in treatment for his addiction does not excuse such a total lack of affirmative action to maintain the parent-child bond.

Father also argues that Mother’s obstructive behavior should excuse his failure to perform parental duties. Father asserts that Mother and W.H.D. have disparaged him and his family to the Children, and encouraged them to reject his gifts and cease having contact with him. The Court found the testimony by the Children that Mother has encouraged their relationship with Father credible. During his incarceration, Mother accepted Father’s collect calls to allow him to speak with the Children, and help the boys draw pictures to send him. Mother encouraged the Children to telephone their Father. Though Father sporadically exercised custody, disappearing sometimes for months at a time, Mother continued to allow him time with the Children upon request. Mother took the Children for outings with Father’s family. Each boy testified that Mother encouraged them to go for visits with Father, and at first forbade them from speaking negatively about their Father or visits with him in her presence. Only when admonished by the boys’ counselor that she needed to allow them to voice their concerns and to listen to their feelings regarding Father did Mother allow them to discuss their sentiments with her. When Father wished to take the boys to lunch, Mother encouraged the two to go. After 2008, Mother testified the

boys did not wish to open any cards sent by Father, and refused his gifts, but that she encouraged them to open the mailings, and told them they should not burn the cards in the fireplace.

Father points to Adoption of B.D.S. as a similar situation, where the Court found obstructive tactics by the custodial parent excused the failure of the non-custodial parent to perform parental duties. See In re Adoption of B.D.S., 431 A.2d 203 (Pa. 1981). Indeed, in B.D.S., the natural mother of the children moved several times without forwarding an address, kept an unlisted telephone number, threw away gifts left for the child, and refused to allow visits. See id. at 205-06. The maternal family refused to give the father information, involved law enforcement to keep him off their property, and the mother changed the child's first and middle name without providing any notice. See id. The natural father, however, searched for and found the child again and again, sent cards and letters, bought gifts for the child, contacted attorneys and telephoned the mother and her relatives. See id. Here, Mother was supportive of the relationship between Father and the Children until the psychological toll and emotional turmoil it caused them became clear. Mother has resided at the same address, known to Father, for several years, and maintains the same telephone number. Mother encouraged the Children to speak to Father, to retain his cards and gifts, and to have lunch with him. Further, instantly, Father took little or no action himself to overcome any obstacles in the path of maintaining the parent-child bond.

Nor does the Court find that Mother's support of N.D. in his desire to be adopted by W.H.D. demonstrates a design to deter the performance of Father's parental duties. See id. at 206. N.D., after attaining adulthood, desired to establish a legal relationship with his step-father, who he views as a true parent. Notice to and consent from Mother or Father was not legally required for the adult adoption to occur. The fact that Mother supported her adult child's wishes does not demonstrate a design to obstruct Father in maintaining a relationship. Thus, the Court cannot conclude Mother engaged in obstructive behavior so as to excuse Father's failure to perform parental duties.

Finally, Father maintains that because the Child did not wish to see him and told him not to call or send letters that his inaction is explained and should be excused. Barbara Dickey testified that the Child had a "wall of anger" erected against Father, and was extremely resistant to mending their relationship. In response, Father maintains he did not wish to use legal means to force the Child to visit with him, hoping instead his son would suddenly desire to communicate with him and contact him for a lunch or counseling session. The Child testified he had made up his mind not to see or talk to his Father again.

The Court cannot find the Child's resistance excuses the failure to perform parental duties. Father's choices and behavior created the Child's wall of anger against him, and it was incumbent upon Father to use any and all means to bring down that barrier. Prior to 2008, the Child had been repeatedly disappointed by Father. Father's alcoholism, and the incarceration and hospitalization attendant thereto, resulted in missed custodial periods and events in J.T.P.'s life. Even when the Children were visiting with Father, the three did not do any activities together or create any fond memories. Indeed, both N.D. and J.T.P. testified that while Father initially took them fishing and threw the football with them, for several years prior to ending the visits, they would simply sit on the couch and watch television all weekend. The boys testified Father would drink while they were in his custody, and they did not enjoy the visits.

Father engaged in inappropriate discipline of the Child and his brother while intoxicated. Father and his family refused to acknowledge the cause of issues between Father and Mother, and the Child often heard them disparaging and threatening Mother. Because Mother was the sole source of stability and consistency in his life, such behavior only alienated the Child further. Indeed, each boy testified to recalling custody exchanges where they would refuse to get out of the car, and Father and paternal grandmother would curse at Mother and threaten her with incarceration for contempt. J.T.P. witnessed paternal grandmother call Mother a slut and a whore at a t-ball tournament, and threaten her with jail, recalling crying during the exchange. It is no wonder that the Child decided Father had enough chances, and that he did not wish to expose himself to Father's behavior. J.T.P. had to protect himself from the disappointment, fear, and emotional pain that his relationship with Father caused him.

Father, however, was the parent and his choices were the source of the rift between the two. It was incumbent upon Father to continue his efforts to mend the relationship with his son, despite the Child's assertions he did not wish to have any contact. When separated from their child, it is "incumbent upon a parent ... to maintain communication and association," which requires "an affirmative demonstration of parental devotion." In re G.P.-R., 851 A.2d 967, 977 (Pa. Super. Ct. 2004). A parent, therefore, has a duty to exert themselves to "take and maintain a place of importance in the child's life." Id.

Father could have continued telephoning regardless of whether the Child consented to speak with him. Instead, he acquiesced in the wishes of his twelve (12) year old son not to call. Father could have continued to send gifts and cards, regardless of whether the Child kept them. Instead, Ms. P., the Child's paternal grandmother, testified that after hearing the Child burned his cards and gifts during a custody hearing in 2008, Father stopped sending cards and gifts to the



Children. Father could have sent letters, regardless of whether the Child read them. Instead, Father stopped all communication with the Child. Father could have taken legal action, both in 2008 and in 2011, to commence periods of physical custody with the Child or the resumption of counseling. Instead, Father elected to wait for his son to contact him. If Father had acted, he would have demonstrated to the Child that Father cared for him, was concerned about him, and was committed to mending their relationship.

Because Father took no affirmative action, the Child testified he does not even think Father wishes to see him. J.T.P. stated that Father does not try to contact him. The Child does not know how Father is doing, and testified he is not interested. Because of the years of disappointments and emotional turmoil, the Child testified he does not want Father to contact him. Indeed, the Child testified to making up his mind not to give Father any further chances at age eleven (11) or twelve (12), echoing his brother's testimony that Father has always let them down. Father was the adult and Father's actions were the root of the deterioration of the parent-child bond. If Father wished to preserve his parental rights, and indeed, wished to have any relationship with his Children, he was required to take continuing affirmative steps. The Child's resistance, the foreseeable consequence of Father's behavior, does not excuse the total failure to perform parental duties.

Having determined the Petitioners have met their burden under Section 2511(a)(1) of the statute, the Court will now examine whether termination will serve the best interests of the Child under Section 2511(b). See 23 Pa. C.S.A. §2511(b). Under this second inquiry:

Intangibles such as love, comfort, security, and stability are involved when inquiring about the needs and welfare of the child. The court must also discern the nature and status of the parent-child bond, paying close attention to the effect on the child of permanently severing the bond.

In re C.P., 901 A.2d 516, 520 (Pa. Super. Ct. 2006). Additionally, the Superior Court has stated:

The trial court should also examine the intangibles such as the love, comfort, security, and stability the child might have with the foster parent. Another consideration is the importance of continuity of relationships to the child and whether the parent-child bond, if it exists, can be severed without detrimental effects on the child. All of these factors can contribute to the inquiry about the needs and welfare of the child.

In re K.Z.S., 946 A.2d 753, 763 (Pa. Super. Ct. 2008).

Here, the Child has stated he has no relationship with Father, and the two have not spoken in years. The Child has made up his mind that Father deserves no further second chances. The severing of the bond between Father and the Child can be accomplished with little or no detriment to J.T.P. Indeed, he has been living without Father's presence in his life for more than two (2) years. During this time, and before, rather than with Father, the Child has found love, comfort, security and stability in his relationship with W.H.D., and feels that W.H.D. has been his "real father" for many years. It is this relationship that is the beneficial, parent-child bond requiring protection and deserving of preservation. In terms of the continuity of relationships, legal adoption and the cementing of the bonds between W.H.D. and the Child will assure that continuity and stability, and promote J.T.P.'s best interest.

Our Supreme Court has made clear that upon failure to perform parental duties "a parent's basic constitutional right to the custody and rearing" of his child is converted to "the child's right to have proper parenting and fulfillment of his ... potential in a permanent, healthy, safe environment." There is no question that Father has failed to act as a parent to J.T.P., and the Child has a right to proper parenting from a responsible and committed father figure. While the Court applauds Father's efforts at rehabilitation, and sincerely hopes he has at long last conquered his disease, addiction does not toll parental responsibilities, nor excuse a parent's failure to act to maintain a relationship with their child. Nor does the Court find that Mother has prevented the performance of parental duties, or that the Child's resistance excuses Father's lack of affirmative action. The Court will terminate Father's parental rights, to allow the Child to be freed for adoption by the man who has actively accepted the role of his parent.

#### Conclusions of Law

1. The Court has jurisdiction of the parties and the subject matter under 23 Pa. C.S.A. Section 2501 et seq.
2. The prayer of the petition should be granted, all requirements of the applicable statute having been complied with.
3. The Court finds by clear and convincing evidence the existence of valid grounds to involuntarily terminate the parental

rights of C.T.P., Jr., pursuant to the following statutory authority:

23 Pa. C.S. §2511 (a)(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 the child or has refused or failed to perform parental duties.

**Now, therefore, it is ordered and decreed that:**

1. The parental rights and duties of C.T.P., Jr., Natural Father of J.T.P., are hereby terminated, and
2. Custody of J.T.P. is awarded to L.A.D. and W.H.D. under the provisions of Section 2521 of the Adoption Act, and
3. C.T.P., Jr. is hereby advised pursuant to Act 101 of 2010 (23 Pa. C.S. §§2731-2742) that he has a continuing right as a parent to voluntarily place on file and update social and medical history information, whether or not the medical condition is in existence or discoverable at the time of the present adoption. The information you choose to provide could be important to the child's present and future medical needs. Requests to release the information will be honored if certain conditions set forth by Act 101 are met. All information will be maintained and distributed in a manner that fully protects your privacy. C.T.P., Jr. is further advised that he may obtain the appropriate form to file social and medical history information, either now or in the future, by contacting the Pennsylvania Adoption Information Registry (PAIR), Franklin County Children and Youth Service, any private licensed adoption agency, Franklin County Clerk of Orphans' Court Office, or it may be found online.
4. C.T.P., Jr., is hereby advised that he has the right to appeal this Order of Court within thirty (30) days of its entry. Notice of such appeal shall be provided in accordance with the Pennsylvania Rules of Appellate Procedure.

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<sup>[1]</sup>Father testified to sending the Child a Christmas card and a birthday card in 2011, which the Child, N.D. and Mother disputed. Even were the Court to find Father's assertion credible, which it does not, mailing two (2) cards in the span of a year is insufficient performance of parental duty to forestall termination of parental rights.