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L.S. v. C.H.H.

L.S., Petitioner, v. C.H.H., Respondent
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Orphans' Court Division, Adoption Docket No. 65 of 2010

Infants; Dependent, Neglected, and Delinquent Children; Subjects and Grounds; Termination of Parental Rights or other permanent action. Infants; Dependent, Neglected, and Delinquent Children; Subjects and Grounds; Abandonment or absence of parent.

1. Pennsylvania law allows the rights of a parent regarding their child to be terminated if the petitioner can demonstrate by clear and convincing evidence grounds exist under any subsection of Section 2511(a) of the Adoption Act.
2. Subsection (a)(1) is satisfied by conduct sustained for at least six (6) months previous to the filing of the petition either evidencing a purposeful, settled intent to relinquish parental rights, or, alternatively, by the failure or refusal to perform parental duties.
3. A finding that parental duty has gone unperformed, or was intentionally relinquished, for a period of at least six months does not end the inquiry. Such nonperformance must be evaluated in terms of the totality of the circumstances confronting the particular parent whose rights are in jeopardy. The Court must consider: (1) the parent's explanation for their conduct, and (2) the post-abandonment contact between parent and child, prior to consideration of the best interests of the child under Section 2511(b).
4. There are situations where a custodial parent has deliberately created obstacles and has by devious means erected barriers intended to impede free communication and association between the non-custodial parent and the child.
5. A non-custodial parent must "exert himself" and exercise reasonable firmness in resisting obstacles placed in the path of the parent-child relationship. Absent such active efforts, termination is proper.
6. While the effort required of a parent is dictated by the individual circumstances of each case, and what a reasonable parent would do in such situation, a parent must actively work to take and maintain a place of importance in the child's life. To safeguard their rights, a parent may not acquiesce in obstructive behavior by the custodial parent.
7. . Mother's conduct created obstacles which Father was required to overcome to maintain a place in his Child's life, angered by the Child's accusation of impropriety against her then-new paramour, and frustrated by Father's tardiness and his repeated failure to provide notice regarding the exchanges. Mother was not forthcoming with information and indeed, she did not provide Father with her addresses following her relocation, nor did she volunteer information regarding the Child's school, or those residing in his household. Mother changed her last name, and then her telephone number shortly after Father's second release from incarceration, and did not provide it to him or his mother.
8. Incarceration may make parenting more difficult, but such restriction of freedom alone does not obviate the duty to exercise reasonable firmness under the circumstances to maintain a secure parent/child bond. A parent is required to use whatever resources are available to them in prison to foster a continuing close relationship with their child.
9. A parent is not required to perform the impossible. However neither may a parent sit idle, but must engage in proactive steps to take on the role of parent in the child's life. A parent's duty clearly encompasses that which is difficult and demanding.
10. The failure to accept parental responsibility or perform parental duties does not require the parent cease to feel concern for the Child's interest and welfare. Yet parental rights cannot be preserved with a statement a parent does not wish to relinquish them.

11. Father did not undertake reasonable efforts to overcome the obstacles Mother created, or even the impediments resulting from his own decisions. Lacking a drivers' license, Father made no effort to obtain one, and expected Mother to provide transportation for the Child to visit him in Baltimore, where he was required to move following his incarceration. Father has been gainfully employed, but has failed to provide support. Father did not utilize any of the resources available to incarcerated parents to maintain contact with their children, rather taking no steps to maintain a relationship with his son while paying his debt to society. Father never requested Mother's contact information from the Court via motion, never filed for contempt in the parties custody case, and did not even undertake a search of the Internet or county records in hopes of locating his son.

12. Following a determination that grounds have been proven under Section 2511(a), the Court must examine whether termination will best serve the needs and welfare of the child under Section 2511(b), considering both the tangible and intangible dimensions of the parent-child relationship.

13. The Child looks to Mother's husband, M.S., for emotional support and nurturance, comes to M.S. with his problems and troubles, and views M.S. as the source of fatherly guidance and companionship in his life. Indeed, such is the logical result of Father's failure to actively work to hold such a position in the eyes of his Child. Where Father has neglected his duties, M.S. has taken them up and performed them admirably. Where Father has failed, M.S. has excelled.

Appearances:

Abigail J.W. Salawage, Esquire, *Attorney for Petitioner L.S.*

Ann M. Rotz, Esquire, *Attorney for Respondent C.H.H.*

Timothy D. Wilmot, Esquire, *Guardian Ad Litem for the Child D.Z.H.*

OPINION

Van Horn, J., February 7, 2011

Procedural History

September 7, 2010, L.S. [hereinafter "Mother"] filed a Petition for Involuntary Termination of Parental Rights, requesting the Court terminate the parental rights of C.H.H. [hereinafter "Father"] to the minor child D.Z.H. [hereinafter "Child"], born November 22, 2002.^[1] Though the Petition does not clearly set forth the legal grounds underlying the request for termination, close reading reveals it was filed under 23 Pa. C.S.A. 2511(a)(1), stating Father has either demonstrated a settled purpose to relinquish his rights, or has refused or failed to perform his parental duties. Father was served September 23, 2010 with the Petition and Notice of Hearing, set for October 21, 2010. On that date, Father appeared in Court pro se, and requested the matter be continued to allow for retention of private counsel. The Court by dictated Order provided for such continuance, further directing Father's Answer to the petition be filed no later than November 18, 2010. Additionally, the Order provided that if entry of appearance on behalf of Father was not filed by November 8, 2010, the Court would appoint counsel.

On November 12, 2010, following a review of the file and finding no evidence Father had obtained private counsel, the Court appointed counsel for Father, reaffirming the hearing date and directing appointed counsel to file an Answer no later than fourteen (14) days prior to hearing. Answer was timely filed by Father thereafter, on November 22, 2010. Hearing upon the Petition was held as scheduled, on December 6, 2010. Following the presentation of evidence, the Court dictated an Order requiring the submission of legal authority from counsel, to be filed of record no later than December 28, 2010. Such written submissions were timely filed by counsel for Mother, Father, and by the Guardian ad Litem for the Child.

The Court having reviewed the file, its notes of testimony at hearing, the written argument of the parties, and the applicable law, now disposes of the Petition for Involuntary Termination with this Opinion.

Statement of Facts

At the time of the Child's birth, the parties were married and resided together^[2] in Chambersburg, Pennsylvania, separating more than three (3) years later, when the Child was not yet four (4) years old. Father testified the family

remained intact until Mother filed a Petition for Protection from Abuse in June of 2006, which was granted at the consent of the parties by the Court, Father's consent predicated on the condition entry of the Order did not constitute an admission of abuse. The PFA Order also provided Father with two week-day periods of custody, and alternating weekends, as well as providing Father would have custody in the event Mother had to work overnight. Mother filed for support through the Domestic Relations Office in 2006, followed by a filing for Divorce and for Custody in 2007. See P.E. No. 3. The Order for Conciliation setting forth the custodial arrangement following filing of the Custody Complaint reduced Father's set periods of custody to alternating weekends. Following Conciliation, a partial holiday schedule was implemented, though Mother refused to expand Father's periods of custody, stating he was unreliable in his pick-up times, and refused to allow Father to pick the Child up from daycare, insisting the exchanges remain at the YMCA.

From 2006 until 2008, the parties exchanged the Child as provided by the Orders then in effect, with Father exercising the majority of his allotted custodial periods. The parties did have some difficulties, Mother testifying Father was consistently late for exchanges, a few times even failing to appear without giving any notice, and often requested the dates and times set forth for custodial periods or exchanges in their Custody Order be changed to fit his needs. On the advice of counsel, Mother testified to waiting for Father for thirty (30) minutes to drop the Child off when Father was tardy. At the time the parties separated, Father was evicted from their shared residence and experienced financial difficulties, so that Mother was forced to retrieve the Child early during some of his periods of custody because Father did not have food for the Child to eat. Because Father lacked stable housing for a time, Mother testified Father and son would occasionally spend the weekend living out of Father's car, or staying with Father's friends.

Father testified the issues resulted from Mother's conduct in constantly changing the exchange location and times, and her refusal to be flexible or aid him in exercising custody. The parties first Custody Order provided for exchanges at Wal-Mart, where the two were employed. Following conciliation, the Order was altered to provide for exchanges at the YMCA, to which Father could walk. Father also testified to an occasion where he was forced to choose between working required overtime in his employment as a welder, or picking up the Child, testifying he lost the job after electing to exercise custody.

In June of 2007, Mother relocated from the parties' former residence to move in with M.S., her current husband. Mother testified to completing a change of address form with the post office but declined to provide Father with her new address in Saint Thomas, Pennsylvania. At the time, and for six (6) months thereafter, the Protection from Abuse Order remained in effect, and Mother did not wish Father to come to her home. It was also around this time that Father testified the Child disclosed to him that Mother's new boyfriend, M.S., was touching him inappropriately. Mother and her husband conversely believe that Father convinced the Child to falsely report, taking him to the police station and telling the police Mother's boyfriend's name. Father asserts he asked Mother who was residing in her home, and that Mother replied she lived alone, and that he did not know her husband's surname. It is undisputed the report was returned unfounded. Clearly, Father, Mother and Mother's husband were all upset by the incident.

Mother and Father were divorced by Decree dated July 15, 2008. In August of 2008, the Child began Kindergarten at St. Thomas Elementary School. See P.E. No. 1. Father did not ask, and Mother did not relate, information regarding the elementary school the Child would be attending. Neither did Father request information regarding the Child's performance in school or the names of his teachers. In September 2008, Mother quit her job at Wal-Mart to remain at home.

The last weekend on which Father exercised custody was September 19, 2008, taking the Child on Friday and returning him to Mother's custody on Sunday. Mother testified that on Father's next weekend, he telephoned and stated his work schedule would not allow him to exercise his custodial weekend. In early November of 2008, Father was incarcerated after being charged with Theft of Leased Property, and was unable to exercise physical custody of the Child. See GAL Ex. No. 1. During Father's incarceration, the Child's paternal grandmother contacted Mother on a few occasions, on one such occurrence in October or November of 2008 requesting to travel to Chambersburg to visit the Child. Mother testified she would willingly have met Father's mother in town, and offered to do so, but that paternal grandmother did not telephone later, as promised, to arrange for a specific date, time, and place. Upon his release in early February of 2009, because he required a stable home plan, Father relocated to Baltimore, Maryland, to reside with his mother.

During Father's incarceration, in January of 2009, Mother relocated again, to her current residence. Mother did not inform Father she had changed her residence, but did update her address with the Domestic Relations Office. After Father's release from incarceration at the beginning of February, Father and Mother communicated regarding custody, and specific arrangements were made for Father to come from Baltimore to retrieve the Child. However, Father did not have a successful period of custody with the Child, a fact for which each blames the other. Mother testified Father failed to appear for planned exchanges, exemplified by an instance in February 2009 where the date and place was planned, but Father did not call to inform Mother of the time he wished to meet. Father testified to an instance Mother failed to appear

for arranged exchange at Sheetz in Hagerstown, stating he awaited her for two (2) hours and was later told she forgot her telephone at her place of employment. Mother testified credibly that between February and May of 2009, Father called only sporadically to arrange for custodial periods with the Child, and did not speak with the Child on the phone during any of the calls.

Father blames this conduct on his lack of a valid driver's license, stating he was forced to rely on others to provide transportation to Chambersburg. Father also blames Mother, stating she failed to appear for exchanges when the two made plans. Difficulty was surely caused by the fact the custody order had remained unchanged since Father was incarcerated and released to relocate to Baltimore, Father failing to request modification to reflect his changed circumstances. As such, Mother appeared at the designated exchange point once in 2009, and did not return after he failed to appear, knowing he resided in Baltimore.

Father submitted as evidence of his efforts a copy of sheets from his day planner, in which he recorded his efforts to contact Mother regarding custody and her responses during the first two weeks of May, 2009, just prior to his second incarceration. See R.E. No. 1. Clearly Father did not seek to exercise every custodial weekend provided to him in the parties' custody order, rather attempting sporadically to arrange weekends around his schedule and that of his mother, who was to provide transportation.

After a partial payment on October 31, 2008, Father failed to make support payments as required by Court Order. See P.E. No. 3. As a result, Father was found in contempt of the parties' Support Order on May 14, 2009. See *id.* The Court sentenced him to a term of incarceration of seventy-five (75) days from May 11, 2009, the date of his incarceration. See *id.* Father testified that following an unsuccessful attempt to exercise custody the weekend of May 9 and 10, 2009, he telephoned Mother an estimated three (3) days later and found her telephone disconnected. See R.E. No. 1. Mother, however, testified she spoke with Father's mother after his incarceration in May of 2009, who asked her to drop the support case against Father so that he could be released. Because Mother was dismayed and angered by the request, she did not inform paternal grandmother of her impending marriage.

On June 27, 2009, Mother married her current husband, M.S., taking his last name. Father was released in early August of 2009, a fact of which Mother was aware due to correspondence from the Domestic Relations Office. At the end of August, 2009, Mother changed her phone number, consolidating bills as a result of her marriage, and taking a cell phone line on her husband's plan. Mother did not inform Father or his mother of the change, though she admitted she had spoken to the Child's paternal grandmother in the last two (2) months. Mother testified Father had three (3) to four (4) weeks to contact her at her old number between the date of his release and the time she transferred service to her husband's plan. She received no telephone calls from Father during this time period.

Father has not had contact with Mother or the Child since that time. Father testified he sought legal aid to enforce the custody order, going to Mid Penn Legal Services, who had a conflict as they had previously represented Mother. Father testified he sought private attorneys in Chambersburg and York to enforce the custody order, but they were too expensive. Father did not file pro se to enforce the parties' custody order. Father also stated he inquired about Mother's address from Domestic Relations in 2009, and was informed Mother did not want further contact with him and her information could not be given out without a court order. No effort was made on his part to secure an order seeking information for custody purposes. Father also stated he looked into hiring a private investigator, which was prohibitively expensive. Father, who has worked at a pizzeria in Baltimore on and off for four (4) years, acknowledged his failure to consistently pay child support, but testified since his second incarceration he has maintained contact with Domestic Relations and completed job search forms. It is undisputed that Father is behind on his support both for the Child and another son, in a combined amount of more than twenty thousand dollars (\$20,000.00), his last payment for the Child having been made in July of 2010.

During the time the two parties were exchanging custody, they occasionally communicated via Yahoo messenger, and using email, though each disputes the other's characterization of the frequency with which these methods were used. Mother testified while she has not accessed her Yahoo messenger and email accounts since that time, she did not delete them. Father, conversely, testified to attempting contact through the internet, and finding the accounts deleted. Since being served with the Petition to terminate his rights, Father has gone to Wal-Mart to inquire about Mother's address, and was told no information could be given. Father has also inquired at Domestic Relations and at the Court, and was told no information could be given out. Father admitted he has never attempted a white pages search, stating he did not know Mother's new last name. Father also testified he did not send mail to Mother's former address to see if it would be forwarded. Father does not wish his parental rights to be terminated, testifying he now wishes to reestablish a relationship with his son.

Discussion

1. Grounds for Termination

Pennsylvania law allows the rights of a parent regarding their child to be terminated if the petitioner can demonstrate by clear and convincing evidence grounds exist under any subsection of Section 2511(a) of the Adoption Act. See 23 Pa. C.S.A. §2511(a) (1)-(9) (2011); In re B., N.M., 856 A.2d 847, 854 (Pa. Super. Ct. 2004) (burden of proof on party seeking termination). The focus of a proceeding in involuntary termination is upon the conduct of the parent, examining whether that conduct justifies the termination of parental rights. See In re B., N.M., 856 A.2d at 854-55. Instantly, the Petition is brought under the first subsection, requiring: “[t]he parent by conduct continuing for a period of at least six [(6)] 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.” 23 Pa. C.S.A. §2511(a)(1).

The subsection is satisfied by conduct sustained for at least six (6) months previous to the filing of the petition either evidencing a purposeful, settled intent to relinquish parental rights, or, alternatively, by the failure or refusal to perform parental duties. See In re Z.P., 994 A.2d 1108, 1117 (Pa. Super. Ct. 2010). The Court must not apply the six (6) month provision in the statute “mechanically,” though it is most critical to the analysis, but rather must examine the entire background and individual circumstances of each case. Id. 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 hesitance, of the truth of the precise facts in issue.” In re C.M.S., 832 A.2d 457, 461 (Pa. Super. Ct. 2003).

A finding that parental duty has gone unperformed, or was intentionally relinquished, for a period of at least six (6) months does not end the inquiry, however, or automatically warrant an involuntary termination. See In re Adoption of Hutchins, 473 A.2d 1089, 1092 (Pa. Super. Ct. 1984). Such nonperformance must be evaluated in terms of the “totality of the circumstances confronting the particular parent” whose rights are in jeopardy, and the Court must consider any excuses put forth to explain such parental failure. See id. Indeed, the Court must consider: (1) the parent’s explanation for their conduct, and (2) the post-abandonment contact between parent and child, prior to consideration of the best interests of the child under Section 2511(b). See In the Matter of Adoption of Charles E.D.M., II, 708 A.2d 88, 92 (Pa. 1998).

Following the inquiry conducted under subsection (a), should the Court be clearly and convincingly satisfied grounds have been proven which merit termination, it must then examine whether termination will best serve the needs and welfare of the child. See 23 Pa. C.S.A. §2511(b). The statute provides:

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.

Id. This second portion of the inquiry should include consideration of both the tangible and intangible dimensions of the parent-child relationship, such intangible portion including “love, comfort, security and closeness.” See In re B., N.M., 856 A.2d 847, 859 (Pa. Super. Ct. 2004). The Court must consider whether there is a bond between the child and the parent facing termination, asking whether the severance of the bond would destroy an existing, necessary, and beneficial relationship. See id. In termination proceedings, the trial court, as the trier of fact, is the sole judge of credibility. See In re Adoption of B.D.S., 431 A.2d 203, 206 (Pa. 1981).

2. Parental Duty and Obstructive Conduct

It is uncontested that Father has not seen the Child since September of 2008, and has not offered him emotional or mental support or nurturance since that time. Neither have Father’s payments for the Child’s physical support been paid consistently, with Mother stating she has received only two (2) payments since Father’s first incarceration. Our precedent is clear that a failure to have contact with or provide support for a child for six (6) months does not automatically forfeit a parent’s rights. See Adoption of M.S., 664 A.2d 1370, 1373 (Pa. Super. Ct. 1995). Indeed, there are situations where a custodial parent has “deliberately created obstacles and has by devious means erected barriers intended to impede free communication and association between the non-custodial parent” and the child. In re C.M.S., 832 A.2d 457, 463 (Pa. Super. Ct. 2003). See also In re Shives, 525 A.2d 801, 803 (Pa. Super. Ct. 1987). So too, parental rights may not be terminated solely based on economic factors, if they are not within the control of the parent. See 23 Pa. C.S.A. §2511(b).

Thus, the Court must consider the explanations offered by the non-custodial parent for their apparent neglect, and may terminate parental rights only where the totality of the circumstances demonstrate a clear refusal or failure to perform parental duties that cannot be excused by difficult circumstances. See In re Shives, 525 A.2d at 803. The Court must consider the “excuses proffered to explain the non-performance,” measuring the parent’s actions “in light of what would be expected of an individual in the circumstances in which the parent under examination finds himself.” Adoption of Hutchins, 473 A.2d 1089, 1092 (Pa. Super. Ct. 1983). Under our law, a non-custodial parent must “exert himself” and exercise reasonable firmness in resisting obstacles placed in the path of the parent-child relationship. In re C.M.S., 832 A.2d at 463. Absent such active efforts, termination is proper.

Our appellate courts have repeatedly and consistently stated that the “parental obligation” is a “positive duty” requiring “affirmative performance” and “genuine effort to maintain communication and association with the child.” See In re Adoption of Hutchins, 473 A.2d at 1091. The effort required of a parent is dictated by the individual circumstances of each case, and what a reasonable parent would do in such situation. Yet it is clear that a child’s needs for love, protection, guidance and support cannot be met by “merely passive interest in the development of the child.” See In re B., N.M., 856 A.2d 847, 855 (Pa. Super. Ct. 2004). Rather, a parent must “exert himself to take and maintain a place of importance in the child’s life.” See id. (citing In re Burns, 379 A.2d 535 (Pa. 1977)). By this token, to safeguard their rights, “a parent may not acquiesce in obstructive behavior by the custodial parent,” and must exhibit “reasonable firmness in refusing to yield” to such difficulties. See Adoption of Hutchins, 473 A.2d at 1092.

In the instant case, there has clearly been a lack of reasonable and sincere effort by Father to undertake and perform parental duties, and his failure cannot be sufficiently explained by Mother’s conduct. The Court does believe that Mother’s conduct created obstacles which Father was required to overcome to maintain a place in his Child’s life. Mother was clearly angered by the Child’s accusation against her then-new paramour, and frustrated by Father’s tardiness and repeated failure to provide notice regarding the exchanges. So too, bad blood existed regarding the PFA and Father’s eviction from the parties’ shared residence. Mother was not forthcoming with information and indeed, she did not provide Father with her addresses following each move, nor did she volunteer information regarding the Child’s school, or those residing in his household. Mother changed her last name, and then her telephone number shortly after Father’s second release, and did not provide it to him or his mother.

Yet Father had resources at his command which went unreasonably unused to locate the Child and maintain Father’s place in his life, so that the failure to parent the Child is not fully explained or excused by Mother’s poor behavior. Indeed, many of the hurdles Father had to overcome to preserve his relationship with his son were of his own making. Father lacks a driver’s license, testifying that rather than a suspension or revocation, he has never possessed a valid right to drive. Father did not offer testimony regarding any effort to obtain a license, acknowledging instead that he has been repeatedly caught driving without one and relies on others to provide transportation. The Court found Mother’s testimony that Father and his mother expected her to provide transportation to Baltimore, Maryland, so that Father could see his son following his first release from incarceration to be credible. Father has undertaken no independent, personal effort to increase his physical mobility.

And indeed, the necessity for such transportational freedom was precipitated by Father’s actions. Found guilty of Theft of Leased Property, Father was required to relocate to Baltimore upon his release, and has elected to remain there despite his residence in Franklin County for years following the Child’s birth. Even while residing near to Mother and the Child, Father exercised his custodial periods sporadically, cancelling his allotted times or appearing late. Following the move, Father clearly did not attempt to exercise every period of custody granted him under the Orders then in effect, but instead resorted to inconsistent requests predicated on the efforts of Mother and the Child’s paternal grandmother. Thus, even when he had contact information for Mother and could easily speak with her regarding custodial arrangements, Father was inconsistent, maintaining the relationship with his son at his own convenience.

Father has failed to provide economic support and maintenance for his son. Father has apparently been gainfully employed, but has failed to provide support to Mother. Failure to provide support for a minor child does not conclusively demonstrate a purposeful relinquishment or a failure to perform parental duties, but “it is a factor to be considered in determining whether the parent has forfeited parental rights.” Matter of Adoption of David C., 387 A.2d 804, 809 (Pa. 1978). Indeed, “a period of asserted hardship” will not relieve a parent of his responsibilities, as the relevant question is whether “the parent has utilized those resources at his or her command in establishing a close relationship with the child.” Id. at 808. No address for Mother and Child was required for Father to tender support, as he was required to pay through the Domestic Relations Office. Indeed, the second period of incarceration to which Father was subjected was specifically due to his failure to perform the most basic parental duty, provide material support for his Child’s sustenance and care. In this arena, Father cannot blame his neglect of his parental duty on Mother, as his failure falls squarely and solely on Father himself.

The Court found Mother's testimony regarding her change in telephone numbers credible, and did not believe Father's testimony that he placed a call following the weekend of May 10, 2009, to find her number disconnected. Mother's assertion the number was altered following her marriage in August of 2009, due to consolidation of her bills, is far more likely than Father making a call from the Franklin County Jail. Further, Mother's testimony regarding the call from Father's mother, and her anger at this request to terminate support, was extremely credible. Paternal grandmother could not have contacted Mother following Father's incarceration if the number was disconnected. Thus, after his second release from incarceration, Father had three (3) to four (4) weeks to contact Mother at her previous number. A reasonable parent, having been incarcerated for several months and unable to have contact with his child, would have immediately contacted the custodial parent upon release to arrange for visitation.

The Court also notes it is well established in the Commonwealth that incarceration does not toll a parent's responsibilities. See In the Interest of A.P., 692 A.2d 240, 245 (Pa. Super. Ct. 1997). An absent parent must make special efforts to overcome the gaps created by geographic separation. See Matter of Adoption of David C., 387 A.2d 804, 810 (Pa. 1978). Incarceration may make parenting more difficult, but such restriction of freedom alone "does not obviate the duty to exercise reasonable firmness under the circumstances to maintain a secure parent/child bond." A.P., 692 A.2d at 245. A parent is required to use "whatever resources are available" to them in prison to foster a continuing close relationship with their child. Id. Father did not testify to undertaking any effort to contact Mother or the Child during either term of incarceration. Indeed, there was not testimony regarding any effort undertaken by Father to maintain the bond with his son during his confinements, Father seeming to assume he was not required to take any action regarding the Child while incarcerated. Father did not offer evidence he sent the Child letters while incarcerated, sent cards or gifts on holidays, or contacted the Child via telephone during his confinement. Father did not testify he requested Mother bring the Child to visit him while he was incarcerated, or that he utilized any of the resources available to incarcerated parents to maintain relations with their children. Instead, Father simply neglected his parental responsibility and took no steps to maintain contact with his son while paying his debt to society. This failure also cannot be attributed to obstacles erected by Mother, as Father's inaction while confined was solely within his control.

Even after Mother altered her telephone number, upon his release, there were resources Father could have utilized to locate Mother and his son if he had undertaken reasonable efforts to maintain the parent-child relationship. Father could have petitioned the Court for an Order releasing Mother's address and telephone number from Domestic Relations, as Mother kept the Agency updated with her current contact information. No such Order was requested. Nor did Father ever file for modification of the parties' custodial arrangement following his relocation. Father should have undertaken such efforts prior to the second incarceration to ensure continuing contact with his son when it became apparent the alternating weekend arrangement was difficult to implement due to Father's residence in Maryland.

So too, Father could have filed a petition requesting Mother be held in contempt of the custody orders then in effect. Father could have submitted such a petition pro se to obtain relief in the form of time with his son. No such petition was filed. Indeed, Father repeated his pattern of non-action even following the filing of the Petition and the first scheduled hearing date, representing to the Court he would obtain private counsel, but then failing to do so or to notify the Court appointed counsel was needed. Rather, it was the Court, after setting it's staff to ascertain the status of Father's representation in the office of the Clerk of Courts, and discerning no action had been taken by Father, who *sua sponte* acted to ensure he had competent representation. Even faced with the termination of his parental rights, Father did not act proactively, and did not himself contact the Court to ensure he was provided counsel.

Neither did Father attempt to locate his son using internet searches, phone books, or other county records. It is true that Mother's last name was altered during his second term of incarceration, but Father could have done internet searches using Mother's first name, which is quite distinctive. Public records, such as marriage licenses, could also have been searched by Mother's maiden name. Further, the Child had begun school near the time of Father's last contact with him, and Father was aware of the general location of Mother's residence in Saint Thomas. There is only one school district in that area, and Father failed to request information from the local grade school, or travel there in an attempt to locate his child. Indeed, under the parties' custody order, they shared legal custody, and Father could have inquired at all the area grade schools for information regarding his son, to which such custodial arrangement entitled him. Rather than utilize resources at his command, Father elected to sit back and wait for Mother to initiate contact and make arrangements for him to see his son. Rather than affirmative action, Father decided there was nothing he could do, and then did nothing, despite several basic avenues which could have been pursued to ascertain the location of his Child.

A parent is not required to perform the impossible. See In re G.P.-R., 851 A.2d 967, 976 (2004). However neither may a parent sit idle, but must engage in proactive steps to take on the role of parent in the child's life. See In re B., N.M., 856 A.2d at 858-59. While the Supreme Court has refused to predicate a finding of abandonment upon parental conduct which is reasonably explained or resulted from circumstances beyond the parent's control, where a parent fails to utilize all

available resources to preserve the parental relationship, such a finding is proper. See In re Burns, 379 A.2d 535, 540 (Pa. 1977). While a parent's duty does not require the impossible, it clearly encompasses "that which is difficult and demanding." See id. at 541. The law requires a parent exert "a sincere and genuine effort" to preserve their relationship with their child. See In re C.M.S., 832 A.2d 457, 462 (Pa. Super. Ct. 2003). It is true that for the six (6) months preceding the filing of the Petition, and before that, Father lacked contact information for Mother and the Child, but it is equally clear that Father had resources at his disposal which went unused, where a reasonable parent would have at least tried to utilize such means to locate the Child.

The lack of affirmative action on Father's part to overcome hurdles placed in the path of his relationship with his son cannot be reasonably explained, and Father's repetitive assertion he could do nothing to locate the Child does not make the statement truth. Parental rights are not preserved by "merely waiting for some more suitable financial circumstance or convenient time for the performance of parental duties." Matter of Adoption of David C., 387 A.2d 804, 809 (Pa. 1978). Any other construction of the facts in issue would "allow a parent to avoid the obligation of caring for children merely by voluntarily situating himself so that performance of well-recognized parental duties is inconvenient or requires the expenditure of some effort or money." Id. at 810. The failure to accept parental responsibility or perform parental duties does not require the parent cease to feel concern for the Child's interest and welfare. See id. Nor can parental rights be preserved with a statement a parent does not wish to relinquish them. See In re C.M.S., 832 A.2d 457, 464 (Pa. Super. Ct. 2003).

Instantly, Father has neglected his parental duty, failing or refusing to actively maintain the parent-child relationship with his son. Father's inaction cannot be explained by Mother's conduct, as he failed to utilize the resources at his command to overcome the hurdles placed in the path of the relationship both by Mother's actions and his own choices. Indeed, faced with obstacles, Father simply decided nothing could be done, and waited for Mother to initiate contact with him rather than taking affirmative action to preserve his bond with his Child. Grounds for termination under Section 2511(a)(1) have been amply demonstrated by this refusal or failure.

3. Consideration of the Best Interests of the Child

Having concluded Father has unreasonably failed or neglected to perform his parental duty, the Court must now consider whether termination will best serve the Child's interests. A review of the evidence presented reveals the Child will be best served by severing the remaining, largely superficial ties existing to his biological Father, freeing him for adoption by the man who has given him the nurture, support, and care such natural parent has not.

First, if any bond exists between Child and Father, this bond is not a necessary or beneficial one. See In re B., N.M., 856 A.2d 847, 859 (Pa. Super. Ct. 2004). Mother testified the Child does remember his natural Father, though his memories are cloudy and tinged with unease. Indeed, when the Child happens to pass the residence in which he lived with Mother and Father before their separation, he recalls it as the place where Father used to yell at Mother and at him. The Child's memories are of Father being aggressive, rather than of the supportive, caring, nurturing relationship between the two to which Father testified. Mother stated she has queried the Child as to whether he wishes to visit his natural Father, and the Child says he does not. Indeed, even when Father exercised custody more consistently, Mother testified the Child approached exchanges warily, telling her he did not wish to go because Father would not be there to obtain custody.

Thus, the Court cannot say any bond exists between the Child and his Father, and indeed, if a bond remains between them, it is clearly tenuous. Further, the bond is not a beneficial, loving relation, but a connection which causes the Child anxiety, recalled with trepidation. Rather than a loving parental figure, the Child recalls Father as an aggressive, inconsistent presence in his life. Rather than missing Father and wishing to visit him, the Child does not characterize his Father positively and does not wish to see him.

Conversely, both Mother and her husband testified that the Child has referred to M.S. as 'dad' since December of 2009. M.S. testified the Child came to him wishing to take his last name rather than Father's, and stated he wanted Mother's husband to be his 'permanent dad.' It was this exchange which prompted the filing of the Petition, Mother's husband testifying he told her they would save the money and pursue court action regardless of the expense. M.S. has known Mother and Child since January of 2007. According to Mother, M.S. takes the Child to do "father-son things," most of such things having to do with cars and specifically with racing one against the other. M.S. testified that if he leaves the house, the Child wishes to accompany him regardless of the purposed errand.

Mother's husband volunteers in the Child's school classroom, presently as he has since the Child entered kindergarten, meeting his teachers and taking an active interest in his educational progress. See P.E. No. 1, 3. Mother, obviously emotional, testified that M.S. been there to provide emotional nurturance and physical support for the Child since the two began dating, providing for him when his natural Father either could or would not. It is this bond, between the Child and

M.S., which is the beneficial, nurturing bond to be encouraged. The Child looks to M.S. for emotional support and nurturance, comes to M.S. with his problems and troubles, and views M.S. as the source of Fatherly guidance and companionship in his life. Indeed, such is the logical result of Father's failure to actively work to hold such a position in the eyes of his Child. Where Father has neglected his duties, M.S. has taken them up and performed them admirably. Where Father has failed, M.S. has excelled. The Court will grant the family's request, terminating Father's parental rights to enable this beneficial, strong bond to be cemented by legal process, giving the Child the desired assurance that M.S. will remain a presence in his life as his natural Father has not.

Conclusion

The Petitioner, L.S., has clearly and convincingly demonstrated the refusal or failure of the Respondent, C.H.H., to perform his parental duties to the minor Child. For a period far in excess of the six (6) months required by statute, C.H.H. has neglected his parental responsibility while M.S. has cared for his son. Though Mother's conduct created obstacles to be overcome, the unreasonable failure of C.H.H. to utilize resources at his command to maintain a place in his Child's life impels the Court to find these obstructions do not excuse his failure. Additionally, because of the lack of a bond between C.H.H. and the Child, and the Child's existing, beneficial, strong and nurturing bond with M.S., termination of parental rights is clearly in his best interests.

February 7, 2011, the above captioned matter having come before the Court for private hearing on December 6, 2010, at 9:00 a.m.; and it appearing to the Court that the facts set forth in the petition are true and correct, and further that service of notice of the foregoing private hearing, together with a copy of the petitions for involuntary termination of parental rights, has been made upon C.H.H., Natural Father; Ann M. Rotz, Esquire, Attorney for the Natural Father; and Timothy D. Wilmot, Esquire, Guardian Ad Litem for the Child, in the manner required by this Court, and as evidenced by the Affidavit of Service filed in this matter by Abigail Salawage, Esquire, Attorney for the Petitioner L.S., Natural Mother; it is hereby determined that, in light of the totality of the circumstances, the Petitioner has established by clear and convincing evidence the statutory requirements of 23 Pa. C.S.A. §2511(a)(1) and §2511(b).

Now, therefore, it is ordered and decreed that:

1. The parental rights and duties of C.H.H., Natural Father of D.Z.H., are hereby terminated;
2. Custody of D.Z.H. is awarded to Petitioner, L.S., under the provisions of Section 2521 of the Adoption Act; and
3. C.H.H. is hereby advised pursuant to 23 Pa. C.S.A. §2511(c) of his continuing right to place and update personal and medical history information, whether or not the medical condition is in existence or discoverable at the time of the adoption, on file with the Court and with the Department of Public Welfare pursuant to 23 Pa. C.S.A. §2905(d); and further C.H.H. is advised that he may, at the time of the termination of his parental rights or at any time thereafter, place on file with the Court or the Department of Health, a consent form asking for the Court or the Department to disclose the information contained in the child's original Certificate of Birth, or any other identifying or non-identifying information pertaining to him at any time after the child attains the age of 18, or if less than 18, to the child's adoptive parent or legal guardian pursuant to 23 Pa. C.S.A. §2905(d).
4. C.H.H. 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.

[1] The Court has replaced the full names of the Child and his family with their initials in this Opinion, in accordance with the determination of our appellate courts that preservation of the anonymity of children and their families in such proceedings is in their best interest. See, e.g., *Matter of Adoption of C.A.E.*, 532 A.2d 802, 803 n.1 (Pa. 1987); *In Interest of R.C.*, 628 A.2d 893, 894 (Pa. Super. Ct. 1993).

[2] At hearing, Mother admitted the averment in Paragraph 7 of her Petition for Involuntary Termination, which states the Child never resided with Respondent, was in error and that indeed the three did reside as an intact family for several years.

