

APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: R.E.R.S., A MINOR

: No. 691 MAL 2019

PETITION OF: K.S., III, FATHER

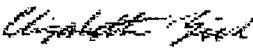
: Petition for Allowance of Appeal
from the Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 27th day of December, 2019, the Petition for Allowance of Appeal
is DENIED.

A True Copy Elizabeth E. Zisk
As Of 12/27/2019

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

APPENDIX B

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: R.E.R.S., A MINOR : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
: :
APPEAL OF: K.S., III, FATHER : No. 561 MDA 2019

Appeal from the Decree Entered November 13, 2018
In the Court of Common Pleas of Huntingdon County
Orphans' Court at No(s): OC-2017-38

BEFORE: PANELLA, P.J., GANTMAN, P.J.E., and MUSMANNO, J.

MEMORANDUM BY GANTMAN, P.J.E.: **FILED OCTOBER 08, 2019**

Appellant, K.S., III ("Father"), appeals from the decree entered in the Orphans' court of the Huntingdon County Court of Common Pleas, which granted the petition of Appellees, D.M.P. ("Mother") and M.D.P. ("Stepfather"), for involuntary termination of Father's parental rights to his minor child, R.E.R.S. ("Child"). We affirm.

The relevant facts and procedural history of this case are as follows. Father and Mother are the natural parents of Child, born in December 2015. Father has been incarcerated since July 18, 2015 (before Child was born), and is currently serving a sentence of eleven (11) to twenty-five (25) years' imprisonment for third-degree murder. Mother is now married to Stepfather. On December 11, 2017, Mother and Stepfather filed a petition for involuntary termination of Father's parental rights to Child. Father filed a *pro se* affidavit on January 19, 2018, in opposition to the termination petition. The Orphans' court appointed counsel for Father and an attorney-guardian *ad litem* ("GAL")

for Child. On May 9, 2018, and October 10, 2018, the court held hearings on the termination petition. At the time of the hearings, Child was less than three years old.¹ The court ultimately granted the petition on November 13, 2018, and terminated Father's parental rights to Child. Father filed a timely *pro se* notice of appeal on November 21, 2018.²

On April 11, 2019, Father's counsel filed in this Court an application to withdraw. The Orphans' court ordered Father on April 16, 2019, to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925. On April 17, 2019, this Court granted counsel's application to withdraw, remanded for the Orphans' court to determine whether Father was eligible for appointment of new counsel, and retained jurisdiction. On April 29, 2019, the Orphans' court appointed new counsel for Father.

Father filed a *pro se* Rule 1925 statement on May 6, 2019. On May 7, 2019, new counsel filed a motion for an extension of time to file a Rule 1925 statement, which the Orphans' court granted the following day. On June 6, 2019, Father filed another *pro se* Rule 1925 statement. Father filed a counseled Rule 1925 statement on June 24, 2019.

¹ See **In Re: T.S.**, ___ Pa. ___, 192 A.3d 1080 (2018), cert. denied, ___ U.S. ___, 139 S.Ct. 1187, 203 L.Ed.2d 220 (2019) (establishing presumption that child who is three years of age or younger cannot form subjective, articulable preference to be advanced during contested termination proceedings).

² Notwithstanding the procedural anomalies surrounding the filing of Father's notice of appeal, the court ultimately directed the clerk of courts to mark the notice of appeal as filed on November 21, 2018.

Father raises the following issues for our review:

WHETHER THE [ORPHANS'] COURT LACKED COMPETENT EVIDENCE TO SUPPORT THE COURT'S INFERENCES OR CONCLUSIONS OF LAW THAT [APPELLEES] PROVED, BY CLEAR AND CONVINCING EVIDENCE, GROUNDS FOR TERMINATION UNDER 23 PA.C.S.[A.] § 2511(A)(1)[?]

WHETHER THE [ORPHANS'] COURT ERRED WHEN IT CONCLUDED THAT CONTINUING PARENTAL RIGHTS FOR [APPELLANT] WOULD BE CONTRARY TO...CHILD'S BEST INTEREST[?]

(Father's Brief at 4).

Appellate review in termination of parental rights cases implicates the following principles:

In cases involving termination of parental rights: "our standard of review is limited to determining whether the order of the trial court is supported by competent evidence, and whether the trial court gave adequate consideration to the effect of such a decree on the welfare of the child."

In re Z.P., 994 A.2d 1108, 1115 (Pa.Super. 2010) (quoting ***In re I.J.***, 972 A.2d 5, 8 (Pa.Super. 2009)).

Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand. ... We must employ a broad, comprehensive review of the record in order to determine whether the trial court's decision is supported by competent evidence.

In re B.L.W., 843 A.2d 380, 383 (Pa.Super. 2004) (*en banc*), *appeal denied*, 581 Pa. 668, 863 A.2d 1141 (2004) (internal citations omitted).

Furthermore, we note that the trial court, as the finder of fact, is the sole determiner of the credibility of witnesses and all conflicts in testimony are to be resolved by [the] finder of fact. The burden of proof

is on the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so.

In re Adoption of A.C.H., 803 A.2d 224, 228 (Pa.Super. 2002) (internal citations and quotation marks omitted). The standard of clear and convincing evidence means 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. ***In re J.D.W.M.***, 810 A.2d 688, 690 (Pa.Super. 2002). We may uphold a termination decision if any proper basis exists for the result reached. ***In re C.S.***, 761 A.2d 1197, 1201 (Pa.Super. 2000) (*en banc*). If the court's findings are supported by competent evidence, we must affirm the court's decision, even if the record could support an opposite result. ***In re R.L.T.M.***, 860 A.2d 190, 191[-92] (Pa.Super. 2004).

In re Z.P., *supra* at 1115-16 (quoting ***In re Adoption of K.J.***, 936 A.2d 1128, 1131-32 (Pa.Super. 2007), *appeal denied*, 597 Pa. 718, 951 A.2d 1165 (2008)).

Section 2512 governs who may bring a petition to terminate parental rights, and what the petition must contain, as follows:

§ 2512. Petition for involuntary termination

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

- (1) Either parent when termination is sought with respect to the other parent.
- (2) An agency.
- (3) The individual having custody or standing in *locum parentis* to the child and who has filed a report of intention to adopt required by section 2531 (relating to report of intention to adopt).

(4) An attorney representing a child or a guardian ad litem representing a child who has been adjudicated dependent under 42 Pa.C.S.A § 6341(c) (relating to adjudication).

(b) Contents.—The petition shall set forth specifically those grounds and facts alleged as the basis for terminating parental rights. The petition filed under this section shall also contain an averment that the petitioner will assume custody of the child until such time as the child is adopted. If the petitioner is an agency it shall not be required to aver that an adoption is presently contemplated nor that a person with a present intention to adopt exists.

* * *

23 Pa.C.S.A. § 2512. If the petitioner is not an agency, then the petition must include "an averment that an adoption is presently contemplated or that a person with a present intention to adopt exists." *In re Adoption of J.F.D.*, 782 A.2d 564, 567 (Pa.Super. 2001). In any event, the burden of proof remains with the petitioning party, who must establish valid grounds for termination by clear and convincing evidence. *In re J.L.C.*, 837 A.2d 1247, 1251 (Pa.Super. 2003).

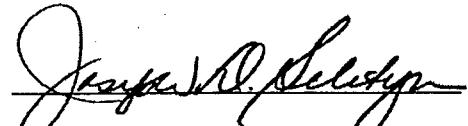
After a thorough review of the record, Father's brief, the applicable law, and the well-reasoned opinion of the Honorable George N. Zanic, P.J., we conclude Father's issues merit no relief. The Orphans' court opinion comprehensively discusses and properly disposes of the questions presented.

(See Orphans' Court Opinion, filed November 16, 2018, at 3-5) (finding: Father has failed to perform any parental duties for Child during six months preceding termination petition; Father has been incarcerated for Child's entire

life; for majority of Child's life, Father has had no contact with Child, because he claims he was unaware of Mother's whereabouts; Father began communicating with Child *via* cards and biweekly phone calls only after Mother and Stepfather filed termination petition; Stepfather has assumed role of stepparent for Child and has cared for Child for several years; Child has developed bond with Stepfather, and Child looks to him as paternal role model; it is in best interest of Child to maintain stability in loving, supportive environment she has at Mother and Stepfather's home; it is not in best interest of Child to visit Father in prison or communicate with Father *via* mail and biweekly phone calls). Accordingly, we affirm based on the Orphans' court opinion.

Decree affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/8/2019

APPENDIX C

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

In re: Involuntary Termination of Parental
Rights of K.S., III, Father, to: R.E.R.S.,
A Minor

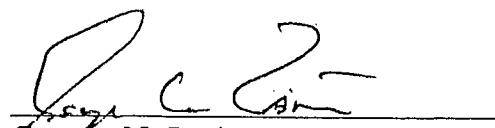
: NO.: OC-2017-00038

DECREE

AND NOW, this 13th day of November, 2018, after hearing and a review of the record, the Court finds that Petitioners, M.D.P. and D.M.P., have established a legal basis for terminating the parental rights of K.O.S., III, with respect to the minor child, R.E.R.S., pursuant to 23 Pa.C.S.A. § 2511(a)(1). The Court further finds that the termination of the parental rights of K.O.S., III, is in the best interest of R.E.R.S., pursuant to 23 Pa.C.S.A. § 2511(b).

It is therefore ORDERED, ADJUDGED, AND DECREED that the parental rights of K.O.S., III, with respect to R.E.R.S. are forever terminated.

BY THE COURT,



George N. Zanic, P.J.

Served by Courthouse Mailbox to

J. Haibel, Esq.

R. Cawley, Esq.

by USPS to

Jessica Miller, Esq.

L. Marshall, Esq.

FILED Nov 13, 2018
Virginia Cooper Register of Wills
and Clerk of the Orphans' Court
Huntingdon County, Pennsylvania

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

In re: Involuntary Termination of Parental : NO.: OC-2017-00038
Rights of K.S., III, Father, to: R.E.R.S., :
A Minor :
:

MEMORANDUM

After hearing, the Court finds that Petitioners, Michael D. Price and Dana M. Price, have established a legal basis for terminating the parental rights of K.O.S. with respect to the child, R.E.R.S., pursuant to 23 Pa.C.S.A. § 2511(a)(1), specifically:

1. K.O.S., 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 claims to the child or has refused or failed to perform parental duties.
2. Specifically, K.O.S., has for a period exceeding six (6) months prior to the filing of this petition, failed or otherwise refused or neglected to have any contact with the child whatsoever.
3. The continuing parental rights of K.O.S. would be contrary to the child's best interest and well-being.

FINDINGS OF FACT

The Court makes the following factual findings in support of the termination of parental rights of Natural Father:

1. Rayven Elisabeth-Rose Simmons (R.E.R.S.) was born on December 10, 2015.
2. The natural mother of R.E.R.S. is Dana M. Price (D.M.P.).
3. The natural father of R.E.R.S. is Kenneth O. Simmons, III (K.O.S.).
4. D.M.P. is married to Michael D. Price (M.D.P.), who is the step-father of R.E.R.S.
5. K.O.S. has been incarcerated since July 18, 2015, at which time D.M.P. was pregnant with R.E.R.S.

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Huntingdon County, Pennsylvania

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6. K.O.S. is currently housed at the State Correctional Institution at Albion in Albion, Pennsylvania.
7. On February 24, 2017, K.O.S. entered a guilty plea in Cambria County to Murder of the Third Degree (18 Pa.C.S. § 2502(c)).
8. K.O.S. was sentenced on the same date to a minimum of eleven (11) years and a maximum of twenty-five (25) years, with an effective date of July 18, 2015.
9. K.O.S.'s earliest possible parole date is July 18, 2026.
10. K.O.S.'s maximum incarceration date is July 18, 2040.
11. He is not eligible for early release in any form or capacity.
12. There are no pending appeals of K.O.S.'s homicide conviction.
13. K.O.S. has remained incarcerated for the entirety of R.E.R.S.'s life.
14. R.E.R.S. will be between the ages of 11 and 25 years old at the time K.O.S. is released from prison.
15. K.O.S. has physically held R.E.R.S. only once, at the time of his sentencing.
16. When R.E.R.S. was an infant, D.M.P. would bring her to the Cambria County Correctional Facility on Saturdays to visit with K.O.S..
17. These visits occurred behind glass and for limited periods of time.
18. D.M.P. stopped visitations between K.O.S. and R.E.R.S. when he was transferred to SCI-Albion.
19. K.O.S. has not seen R.E.R.S. since she was approximately three months old.
20. K.O.S. began sending letters and pictures to R.E.R.S. after the petition for termination had been filed.
21. K.O.S. is participating in parenting classes offered by the Department of Corrections.
22. During periods of partial physical custody by K.O.S.'s mother every other Saturday, K.O.S. is able to make telephone contact with R.E.R.S.
23. K.O.S. has never performed daily parental duties or provided care to R.E.R.S.

ANALYSIS

The Pennsylvania Superior Court has explained the standard by which courts should decide parental termination cases:

“Termination of parental rights is controlled by statute. Our case law has made clear that under Section 2511, the court must engage in a bifurcated process prior to terminating parental rights. 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. 2007).

Courts have the authority to terminate parental rights where any one subsection of 23 Pa.C.S. §2511(a) is satisfied and the factors in §2511(b) are considered. In re Z.P., 994 A.2d 1108, 1117 (Pa. Super. 2010). In this case, D.M.P. and M.D.P. petitioned for the termination of K.O.S.’s parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(1), which states:

The 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 claims to the child or has refused or failed to perform parental duties.

The Petitioners allege K.O.S. failed to perform parental duties for R.E.R.S. for six (6) months preceding the filing of this petition based on his incarceration in a state correctional facility. Incarceration will not disqualify a parent from resuming parental responsibilities as long as the parent will be released from incarceration “quickly enough to permit the court to provide the child with timely permanency upon reunification.” In re: Adoption of S.P., 47 A.3d 817, 829-30 (Pa. 2012).

Where a parent is incarcerated, the fact of incarceration does not, in itself, provide grounds for the termination of parental rights. Id. at 286. However, a parent's

responsibilities are not tolled during incarceration. *Id.* The focus is on whether the parent utilized resources available while in prison to maintain a relationship with his or her child. In re the Adoption of Dale, A., II, *supra* at 302. An incarcerated parent is expected to utilize all available resources to foster a continuing close relationship with his or her children. In the Interest of A.P., 692 A.2d 240, 245 (Pa. Super. 1997) (internal citation omitted).

This Court finds the Petitioners have established a legal basis for terminating the parental rights of K.O.S., pursuant to 23 Pa.C.S. §2511(a), as he has failed to perform any parental duties with respect to R.E.R.S. within the last six (6) months preceding this petition.

It is clear that K.O.S. has been incarcerated for not only the previous six (6) months, but his daughter's entire three-year life and has therefore been unable to perform any parental duties whatsoever. For the majority of this time, K.O.S. has had no contact with R.E.R.S. because he claims he was unaware of D.M.P.'s whereabouts. It was not until the parties originally came to court on this petition in May 2018 that K.O.S. began contacting R.E.R.S. via cards and biweekly telephone calls.

We believe K.O.S. is genuine in his desire to be a parent and establish a relationship with R.E.R.S., however his long-term incarceration prevents him from doing so. Despite whatever good intentions he may have, K.O.S. has never fulfilled any parental duties for R.E.R.S.; he has never changed a diaper, bathed, fed, or consoled her. D.M.P.'s husband, M.D.P., has assumed the role of stepfather and has cared for R.E.R.S. as a parent on a daily basis for several years. R.E.R.S. and M.D.P. have developed a bond and R.E.R.S. looks to him as a paternal role model.

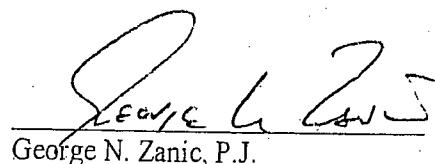
Not only has K.O.S. never fulfilled the role of parent, his interactions with his daughter will be limited to cards and occasional telephone calls until 2026 at a minimum. If K.O.S. is released from incarceration at that time, R.E.R.S. will be eleven (11) years old, and he will then have to begin establishing a meaningful relationship with her.

Having found that grounds for termination exist under § 2511(a), it is our responsibility to now consider the needs and best interests of the children pursuant to § 2511(b).

It is in the best interest of R.E.R.S. to maintain stability in a loving and supportive environment. She has a stable, loving environment at home with her mother, step-father, and step siblings. She is well taken care of and provided for by her mother and step-father, as well as her paternal grandparents. We believe it is not in the best interest of R.E.R.S. to visit K.O.S. in state prison and try to establish a relationship through the confines of an inmate visitation room. Nor do we believe sporadic contact with K.O.S., via mail and biweekly telephone calls, serves any of R.E.R.S.'s needs or interests.

An Order consistent with this Opinion was entered on November 13, 2018.

BY THE COURT,



George N. Zanic, P.J.

APPENDIX D

1 Simmons is my daughter.

2 Q. So your family between the two of you has four
3 children, is that accurate?

4 A. No. There's Leland, too.

5 Q. So five children?

6 A. Yeah.

7 Q. And you reside with Michael's parents?

8 A. Yes.

9 Q. And when did you reside with -- begin residing
10 with Michael's parents?

11 A. February 2nd.

12 Q. of what year?

13 A. This year.

14 Q. Want to talk about the child in question, so
15 Rayven. What is her full name and her date of birth?

16 A. Rayven Elizabeth-Rose Simmons, 12/10/15.

17 THE COURT: Go ahead.

18 BY MS. HABEL:

19 Q. So Rayven's biological father?

20 A. Kenneth Simmons the Third.

21 Q. And you and Kenneth Simmons would have had a
22 relationship at what time? So when did that start?

23 A. December 24th of 2014.

24 Q. And --

25 A. 26th, sorry. December 26th of 2014.

1 December 26th of 2014?

2 A. Yes.

3 Q. And was there a time in which you became
4 pregnant?

5 A. Yes.

6 Q. Do you recall when that would have been?

7 A. April 7th of '15 -- '14.

8 Q. That's very accurate. So it would have been in
9 that time period?

10 A. Yes.

11 Q. Was there a time after you were pregnant where
12 Mr. Simmons was incarcerated?

13 A. Yes.

14 Q. And do you recall the date of his initial
15 incarceration?

16 A. July 18th of 2015.

17 Q. So it would have been a few months after you
18 were pregnant?

19 A. Yes.

20 Q. And what was your understanding at the time of
21 his charges?

22 A. As in what he was being charged for?

23 Q. What was he being charged with?

24 A. They called it a drug deal gone bad for
25 homicide.

APPENDIX E

1 were there other than -- well, did you have any visits
2 there?

3 A. Yes, multiple.

4 Q. Could you describe those? Were they in-person
5 visits? Were they behind glass? How did that go?

6 A. Behind the glass.

7 Q. Who brought Rayven to see you?

8 A. Dana Heron and my mother. Faithfully every
9 weekend.

10 Q. And that was from the time you were incarcerated
11 until you were transferred to the State Correctional
12 system, correct?

13 A. Yes, sir.

14 Q. During your incarceration have you had any
15 contact with Rayven?

16 A. Yeah. I call her through my mom every -- well,
17 when the time my mom gets her every other Saturday between
18 the times.

19 Q. Okay. And you're able to speak with your
20 daughter?

21 A. Yeah. My mom -- they give her the phone and we
22 talk.

23 Q. What kind of things do you talk about?

24 A. Everything. I ask her how her day was and
25 what's she doing, favorite colors and ABCs and counting

1 Q. Well, what do you say -- what kind of things do
2 you say when the call comes in?

3 A. It's her dad, her father's calling.

4 THE COURT: Does she understand -- I think what
5 Mr. Miller's getting at does she understand the difference
6 between who her father is, who her grandfather is, who her
7 stepfather is, who her mother is, who her grandmother,
8 does she understands that?

9 THE WITNESS: Yes. We have pictures. We have
10 put the pictures, have her point out.

11 THE COURT: Okay, thank you. Go ahead.

12 BY MR. MILLER:

13 Q. What kind of -- well, no.

14 MR. MILLER: I think that's all I have for you,
15 Mr. Simmons. Thank you.

16 THE COURT: Ms. Habel, do you have any questions
17 for Mr. Simmons, Jr.?

18 MS. HABEL: I do.

19 CROSS EXAMINATION

20 BY MS. HABEL:

21 Q. From June of 2017 to December of 2017, do you
22 have copies of any of the correspondences sent to your
23 residence for Rayven?

24 A. Yes.

25 Q. And do you have those with you here today?

1 A. I believe calls is 15 minutes.

2 Q. So your recollection is a less than two year old
3 would sit there holding a phone for over 15 minutes
4 engaging in conversation or was it the whole family
5 talking?

6 A. She's smarter than what you think. Trust me.

7 Q. Was the whole family talking during these
8 conversations?

9 A. No. It would be her. She would hold the phone.

10 THE COURT: Ms. Habel, I understand your point.
11 You can move on.

12 MS. HABEL: I have no further questions. Your
13 Honor, this is limited only to the termination?

14 THE COURT: Correct. We're not discussing the
15 custody situation right now. Mr. Covell, do you have any
16 questions?

17 MR. COVELL: No, I don't have any questions,
18 Your Honor.

19 THE COURT: Anything else from this witness?

20 MR. MILLER: I do not, Judge. No, I don't have
21 anything further for this witness.

22 THE COURT: Thank you, Mr. Simmons. Are you
23 going to call --

24 MR. MILLER: Yes, if I could take a moment.
25 There's been reference made to some letters that

1 how do the calls go? Can you describe that for us?

2 A. My son -- when I get Rayven my son he usually
3 knows I get her at 10:00. He'll call me a little after
4 10:00 o'clock and then we will tell Rayven, your dad's on
5 the phone. He gets on the phone, speaks to her the whole
6 call until she gets antsy and don't really want to talk.
7 Then I get the phone back. Then we keep putting on loud
8 speaker so she can try to talk to him again. When the
9 call ends, he tries to call as much as possible until time
10 I have to have Rayven returned back to her mother.

11 Q. So would you agree that Rayven to your knowledge
12 she has not physically seen her father in a very long
13 time?

14 A. I have pictures all through my house and she --

15 Q. That was going to be my next question. What do
16 you do to make sure she knows who your son is?

17 A. Like I said, we have pictures in the home still
18 with pictures of Dana in my home when we all went on
19 vacation. She knows I'm Grandma. She'll point -- where's
20 your mommy? She points to her mom. Where's your dad?
21 She knows for two years old.

22 Q. When she's talking on the phone is she ever
23 confused? Do you ever get the impression she doesn't
24 understand what's going on, who she's talking to?

25 A. No. She says Daddy and I love you. And like I

1 said, he's not here in the picture with her but she knows
2 who her dad is. It's not like she never seen him because,
3 like I said, we was taking Rayven up to visit. We used to
4 put her up against the glass. She kissed the glass and
5 just certain things.

6 Q. Do you receive any -- well, what, if any, money
7 has your son sent you for Rayven?

8 A. I sold plenty of my son's stuff for like
9 birthdays. Like when we get her on that Saturday, I mean
10 if that's that week of her birthday or it's late, just
11 certain things, he wants to buy clothes for her. Right
12 now I got his car that might be sold. It's only a little
13 '95 but whatever we can get out of it. Everything goes to
14 her. And I help out a lot too, me and my husband.

15 Q. Has he ever asked you to actually send money to
16 Dana or does she ask you to buy things instead?

17 A. He asks us to buy things.

18 Q. Do you do that?

19 A. We do.

20 Q. After Dana moved out of your house and once your
21 son went to State prison, what, if anything, were you able
22 to do to help him figure out how to contact Miss Heron?

23 A. Well, actually we contacted her family down in
24 Oxford, Pennsylvania when I didn't know where Dana was
25 with Rayven. I had communication with her sister Kim and

1 MR. COVELL: No, Your Honor.

2 THE COURT: Mr. Covell, you were going to place
3 something on the record.

4 MR. COVELL: And maybe more appropriately in the
5 custody matter. Obviously I think the facts -- I'm not
6 sure that the relevant facts in the termination case are
7 disputed. This child clearly has a relationship with
8 these grandparents and with this mother. I don't know how
9 you measure the relationship of the father.

10 THE COURT: You're the guardian ad litem in both
11 cases?

12 MR. COVELL: I am. I am.

13 THE COURT: As far as the termination, the facts
14 are what they are and that's your position?

15 MR. COVELL: Yes, Your Honor.

16 THE COURT: And as far as what's in the --
17 you're inclined what is in your client's best interests
18 you don't need to offer an opinion as to that. We will
19 deal with the facts on that. As far as the custody case
20 goes, we're scheduled for that today as well. We do need
21 to take some additional testimony on that because I need
22 to determine what is appropriate there but I also don't
23 think it's appropriate to proceed with that until I make a
24 final determination on the termination of parental rights
25 of Mr. Simmons, so I am going to recess both hearings.

1 The testimony is complete on the termination and I will
2 make a ruling on that.

3 Until such time as we make a ruling and have
4 further hearing which I'll schedule a vis -- the schedule
5 of visitation should remain the same as it was on December
6 11, 2017 when I entered an Order. Counsel have any
7 questions? *

8 MS. HABEL: No, Your Honor. I would just note
9 in the custody matter, which is separate from this, there
10 is a separate Order regarding transportation and just all
11 current Orders would remain in full force and effect.

12 THE COURT: That's correct. You in agreement,
13 counsel?

14 MR. ROBERTSON: Yes. I would -- just wondering
15 if my clients could have a few hours for Christmastime,
16 somewhere around Christmas.

17 THE COURT: My hope is we will be back here
18 before Christmas. So we'll address that then. I'll make
19 a note to make sure. We're backed up but I don't think
20 we're that backed up. All right, that adjourns this
21 hearing and, Ms. Habel, we have another hearing and we're
22 going to go into Courtroom 1.

23 (Hearing concluded at 12:25 o'clock p.m.)

24
25

1 A. 11 to 25 years.

2 Q. And the lead charge was criminal homicide, is
3 that accurate?

4 A. Yes.

5 Q. And is that the charge that you actually pled to
6 in this particular case?

7 A. Third agreement murder, yes.

8 Q. And when did you first become incarcerated as a
9 result of these charges?

10 A. July 18, 2015.

11 Q. July 18th of 2015?

12 A. Yes, ma'am.

13 Q. And at the time of your incarceration was
14 Ms. Heron pregnant?

15 A. Yes.

16 Q. And was Rayven born after your incarceration in
17 December?

18 A. Yeah. She was born during the time.

19 Q. During the time you were incarcerated?

20 A. Yes.

21 Q. And since the time in which you've been
22 initially incarcerated, have you been released or out of
23 jail in any way, shape or form?

24 A. No.

25 Q. Other than one physical contact with Rayven at

1 Q. From the very start of your incarceration.

2 A. I've seen -- I haven't seen Rayven since the day
3 she was born, the day she was born they came up and saw
4 me. After that it was every Saturday since I came up
5 State. Miss Heron might have squeezed a day in when she
6 was a day off work. Her and my sister would come up with
7 Rayven.

8 Q. When were you transferred from Cambria County to
9 a State Correctional Institution?

10 A. I want to say if I ain't mistaken March 28, 2017
11 if I ain't mistaken.

12 Q. Since March 28th of 2017 has Miss Heron brought
13 Rayven to the State Correctional Institutions?

14 A. No.

15 Q. Since March 28th of 2017 have you physically
16 seen Rayven?

17 A. No.

18 THE COURT: What was the date on that last
19 question?

20 MS. HABEL: March 28th of 2017.

21 THE COURT: Thank you.

22 MS. HABEL: If I can have a moment?

23 BY MS. HABEL:

24 Q. Mr. Simmons, would you agree that at the time --
25 the last time you physically saw Rayven she would have

1 been approximately four months old?

2 A. Give me a second. Yeah, around there if I'm
3 adding it right. Yes, around there, probably three, four
4 months.

5 Q. She would have been a very small infant?

6 A. Yes.

7 THE COURT: Let me clarify that, Ms. Habel. My
8 understanding did you say the last -- did he go to State
9 Prison on March 28, 2017?

10 BY MS. HABEL:

11 Q. When I say the last time you physically saw her,
12 was that a few weeks prior to that at your sentencing?

13 A. That was the day of my sentencing.

14 Q. So it would have been that same day?

15 A. I mean, no. I didn't go to State Prison on
16 March 28th. My sentencing was in -- I want to say
17 February. Thirty days after I was sentenced I was sent up
18 State, 30-some days.

19 Q. So just to clarify the record, would the day of
20 your sentencing have been the last day in which you
21 physically saw Rayven?

22 A. Physically, yes.

23 Q. If I were to say that was February 24th of 2017,
24 does that sound accurate?

25 A. Sounds about right, yes.

1 Q. So she would have been approximately three
2 months old?

3 A. Correct.

4 THE COURT: Rayven's date of birth is December
5 10, 2015.

6 MS. HABEL: So it's 2015.

7 MR. COVELL: We're talking February, March,
8 2016?

9 MS. HABEL: If I could just have a moment.

10 BY MS. HABEL:

11 Q. Mr. Simmons, do you recall how old she was?

12 A. December to February. That's like two and a
13 half, three months. Two and a half months if I ain't
14 mistaken.

15 Q. You recall her being very small?

16 A. Yes.

17 Q. Have you provided Ms. Heron with any information
18 regarding any classes such as parenting that you have
19 taken while you've been incarcerated?

20 A. I'm attending parenting class right now as we
21 speak.

22 Q. When did you begin that parenting class?

23 A. Four weeks ago.

24 Q. So that would have been after the time of the
25 filing of the petition to terminate your rights, is that

1 accurate?

2 A. Yes. I was put -- there's a waiting list. I
3 was put on a waiting list when I got here last year.
4 There was a waiting list until I could get into the class.

5 Q. Prior to the filing of the Petition for
6 Involuntary Termination of your parental rights, were you
7 involved in the parenting class?

8 A. No. I was just on the silent list, waiting a
9 spot.

10 Q. Did you receive any correspondences from
11 Ms. Heron regarding Rayven since you have been in a State
12 Correctional Institution?

13 A. No.

14 MS. HABEL: I have no further questions at this
15 time.

16 THE COURT: Mr. Miller, do you have questions
17 for your client?

18 MR. MILLER: Thank you, Judge, I do.

19 CROSS EXAMINATION

20 BY MR. MILLER:

21 Q. Mr. Simmons, do you recall when you were
22 incarcerated was it Ebensburg? Is that where you were
23 housed?

24 A. Yes, Cambria County, Ebensburg.

25 Q. Did you have any visits with Rayven while you

1 Q. Was there an opportunity prior to his sentencing
2 for him to see Rayven?

3 A. Yeah.

4 Q. And do you recall about how old she would have
5 been at the time?

6 A. Probably like eight months I think.

7 Q. And at that period of time her -- at eight
8 months was she able to recognize people that she was
9 familiar with and people that she was not familiar with?

10 A. I don't think she really recognized Kenny.

11 Q. That's not the question I asked. Was she able
12 to recognize people? So people that Rayven was familiar
13 with, would she go to?

14 A. Yes.

15 Q. And when Kenny was holding her, how was Rayven
16 reacting?

17 A. She was kind of turning around and crying to get
18 to one of us.

19 Q. She -- and when you say us, who are you
20 referring to?

21 A. Pam, me and Nina.

22 Q. So he was not someone that she -- you would have
23 called her familiar with?

24 A. No, correct.

25 Q. After that contact visit at the time of

APPENDIX F

grace bible church

164 Laurel Lane, Hollidaysburg, PA 16648

2/25/2020

Kenneth Simmons, Mw 8796
SCI Albion
10745 Rte 18, A17
Albion, PA 16475

Dear Kenneth,

We are delighted to let you know that the members of Grace Bible Church (164 Laurel Lane Hollidaysburg, PA 16648) provided your child/children with a gift on your behalf this Christmas because you took the time to submit an application for them. Your act of love brought joy and hope to your loved ones and gave our church the opportunity to show the love of Christ in a tangible way right in our own community! It was truly a blessing to be able to assist in this way—giving your children the chance to be introduced to Christ, all while providing a special Christmas gift from you.

We pray that you will reach out and continue this connection with your children even though you cannot be with them at this time. Please know we are praying for both your child(ren) and you. We hope that you each know the love of Christ and can grow in your relationship with Him this year. Have a good day and God bless!

Sincerely,

Angel Tree Team

Proverbs 3:5-6

"Trust in the Lord with all your heart and lean not on your own understanding;
In all your ways submit to Him and He will make your paths straight."

