

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

IN RE ADOPTION OF:	:	NO. 6662
	:	
CL,	:	
minor child	:	

OPINION AND ORDER

AND NOW, this 22nd day of **January, 2020**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by TL and his fiancée, JB, on August 29, 2019. Said petition is with regard to the parental rights of TL's son, CL, born December 22, 2014. TL and JB seek to terminate the parental rights of the child's biological mother, KH, as a prerequisite to having the child adopted by JB. The Petition for Involuntary Termination of Parental Rights, with notice of a pre-trial conference date and time, was personally served upon KH on September 20, 2019. A pre-trial conference was held on October 4, 2019. KH did not attend this conference, and an Order was entered on October 4, 2019, notifying her that a hearing on the Petition for Involuntary Termination of Parental Rights was scheduled for January 14, 2020, and if she wished to participate and have counsel appointed for her, she must advise the Court, in writing, by October 24, 2019. This Order was sent to two separate addresses for KH, including the address where she was personally served with the Petition. Neither copy was returned as "undeliverable." The Court did not receive notification from KH that she wished to participate in the proceedings and a hearing on the Petition to Involuntarily Terminate the Parental Rights was held on January 14, 2020. TL and JB appeared with their counsel, Taylor Mullholand, Esquire. KH did not appear and the hearing was conducted in her absence.

Finding of Facts

1. CL ("Child") was born on December 22, 2014. The child currently resides with TL ("Father") at 671 Peach Orchard .Road, Muncy, Lycoming County, Pennsylvania. This is the residence of the paternal grandparents. Father and Child have lived at this address since the Child's birth.

2. The Child's biological mother is KH ("Mother"). Mother is believed to be currently residing in Virginia.

3. JB ("Father's Fiancée") anticipates graduating from college in May of 2020 with a degree in nursing.

4. At the time of the Child's birth, Mother and Father were unmarried. Mother lived with Father and Child at the home of paternal grandparents for a short period of time after the Child's birth.

5. Mother and Father are parties to a custody action at Lycoming County Docket #15-21,519.

6. At an initial custody conference on December 23, 2015, the parties reached an agreement for shared physical custody of the Child on a repeating two-week schedule.

7. Mother would frequently request that her periods of custody be ended early and that the Child be returned to Father.

8. Mother left the state when the Child was 2 years old. Since leaving Pennsylvania she has lived in Georgia, North Carolina, and Virginia.

9. Mother and Father signed a stipulation on August 25, 2016, whereby Father was granted temporary full legal and physical custody of the Child, and Mother was permitted contact via Skype every night and visits with the Child as Mother and

Father agreed. Mother was living in Verona, Virginia, at this time. This stipulation was made an Order of Court on September 27, 2016.

10. Father filed a Petition for Modification of Custody on April 11, 2018, alleging that Mother had been absent from Child's life for almost 2 years. At the time of the filing of the petition, Mother was incarcerated in Georgia.

11. Father filed the Petition for Modification because of Mother's prolonged absence from the Child's life and because she threatened to take the Child.

12. A conference on Father's petition was scheduled for May 18, 2018. At the time of the conference, Father was unable to prove service upon Mother, and indicated he no longer wished to proceed with his petition. The Order entered on September 27, 2016, remained in full force and effect.

13. On November 9, 2018, Mother was arrested in North Carolina for possession of methamphetamine and as a fugitive from justice. (Ex. B).

14. Neither Mother, nor any members of Mother's family, have sent the Child cards or gifts for Christmas or his birthday.

15. Mother's last physical contact with the Child was in 2016 prior to moving to Georgia.

16. Since her last contact with the Child, Mother has never made specific arrangements with Father to see the Child.

17. Mother has not utilized the Court system to enforce her custodial rights.

18. Currently, the child would have no knowledge as to who Mother was if he were to see her.

19. The child has no bond with Mother in light of the fact that he has not had contact with her for three years.

20. The child is bonded with Father's Fiancée. She feeds, bathes, and plays with the Child and is available and willing to care for his daily needs.

21. The Child calls Father's Fiancée "mom."

Discussion

Father and Father's Fiancée argue that the basis for termination of parental rights in this case may be found in 23 Pa.C.S. §2511(a)(1), which provides as follows:

§2511. Grounds for Involuntary Termination

(a) GENERAL RULE.--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

- (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

A court may terminate parental rights under Section 2511(a)(1) where a parent demonstrates a settled purpose to relinquish parental claim to a child **or** fails to perform parental duties for at least six months prior to the filing of the termination petition. **In the Interest of C.S.**, 761 A.2d 1197, 1201 (Pa. Super. 2000). When determining whether to terminate the rights of a parent, the Court should consider the entire background of the case and not simply:

mechanically apply the six month statutory provision. The court must examine the individual circumstances of each case and consider all explanations offered by the parent facing termination of his . . . parental rights, to determine if the evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination.

In re: B.N.M., 856 A.2d 847, 855 (Pa. Super. 2004), appeal denied, 582 Pa. 718, 872 A.2d 1200 (2005) citing **In re: D.J.S.**, 737 A.2d 283, 286 (Pa. Super. 1999).

In determining what constitutes parental duties, the Pennsylvania Supreme Court has said:

There is no simple or easy definition of parental duties. Parental duty is best understood in relation to the needs of a child. A child needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the child. Thus, this Court has held that the parental obligation is a positive duty which requires affirmative performance. This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child. Because a child needs more than a benefactor, parental duty requires that a parent "exert himself to take and maintain a place of importance in the child's life."

With these principles in mind, the question whether a parent has failed or refused to perform parental duties must be analyzed in relation to the particular circumstances of the case. A finding of abandonment, which has been characterized as "one of the most severe steps the court can take," will not be predicated upon parental conduct which is reasonably explained or which resulted from circumstances beyond the parent's control. It may only result when a parent has failed to utilize all available resources to preserve the parental relationship.

In re: Burns, 379 A.2d 535, 540 (Pa. 1977)(citations omitted).

The Court finds as of the date the Petition for Involuntary Termination of Parental Rights was filed, Mother had evidenced both a settled purpose of relinquishing parental claim to the Child and had failed to perform her parental duties for a period well in excess of six (6) months. Following the Child's birth, Mother lived with Father and the Child for a short period of time before returning to live with her mother. When Mother vacated Father's family's residence, they shared custody of the Child but Mother was often inconsistent in exercising her periods of custody and would frequently ask that the Child be returned to Father's care before the end of her period of custody. Mother left Pennsylvania in 2016 when the Child was 2 years old. Since leaving Pennsylvania, Mother has lived in Georgia, North Carolina, and Virginia, and has spent time incarcerated. Father believes Mother struggles with a drug addiction.

A parent has an affirmative duty to be part of a child's life; Mother has clearly not met this affirmative duty. Mother has shown, at best, a passive interest in the Child for most of the Child's life. Prior to leaving Pennsylvania, Mother would rarely take full advantage of her time with the Child pursuant to the custody agreement. After she left Pennsylvania, Mother would only occasionally call or Facetime with the Child. Mother never reached out to Father or Father's family to make specific requests or arrangements for visitation with the Child. Mother has not financially supported Father and Child, nor has she sent the Child cards, letters, or gifts for birthdays or holidays. The Court finds Father placed no obstacles in Mother's path which would have prevented her from exercising her parental rights, privileges, and obligations with regard to Child. Father has lived in the same home since the Child's birth, and Mother was aware of how to contact him. Additionally, Mother could have petitioned the Court for a modification of her custody order if she wished to establish specific periods of custody of the Child. Simply put, since leaving Pennsylvania more than 3 years ago, Mother performed absolutely no parental duties for the Child, and failed to take any meaningful steps to enforce her rights under her custody order.

This Court finds that Father and Father's Fiancée have clearly established that Mother has evidenced a settled purpose of relinquishing parental claim to the Child and has refused or failed to perform parental duties for a period far in excess of six months. This settled purpose of relinquishment is especially apparent given the fact that, despite being properly served, Mother failed to appear for the hearing on the Petition for Involuntary Termination.

.As the statutory grounds for termination have been met, the Court must also consider the following:

23 Pa.C.S. § 2511(b) OTHER CONSIDERATIONS.—The Court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

The Court must take into account whether a bond exists between the child and parent, and whether termination would destroy an existing, necessary and beneficial relationship. **In the Interest of C.S.**, *supra*, at 1202. When conducting a bonding analysis, the Court is not required to use expert testimony. **In re: K.K.R.-S.**, 958 A.2d 529, 533 (Pa. Super. 2008) (citing **In re: I.A.C.**, 897 A.2d 1200, 1208-1209 (Pa. Super. 2006)). “Above all else . . . adequate consideration must be given to the needs and welfare of the child.” **In re: J.D.W.M.**, 810 A.2d 688, 690 (citing **In re: Child M.**, 681 A.2d 793 (Pa. Super. 1996), appeal denied, 546 Pa. 674, 686 A.2d 1307 (1996)).

Before granting a petition to terminate parental rights, it is imperative that a trial court carefully consider the *intangible* dimension of the needs and welfare of a child--the love, comfort, security and closeness--entailed in a parent-child relationship, as well as the tangible dimension. Continuity of relationships is also important to a child, for whom severance of close parental ties is usually extremely painful. The trial court, in considering what situation would best serve the children’s needs and welfare, must examine the status of the natural parental bond to consider whether terminating the natural parents’ rights would destroy something in existence that is necessary and beneficial.

In the Interest of C.S., *supra.*, at 1202 (citations omitted).

In the present case, it is clear the Child has no bond with Mother, given the age of the Child at the time of his last contact with Mother and the amount of time that has passed since that contact. Termination of Mother’s rights would not destroy an existing necessary and beneficial relationship as the Child has not seen Mother in approximately

three years. Child is clearly bonded to Father's Fiancée, who has been a prominent figure in his life for the past year and will continue to be, as they are engaged to be married. It is evident to the Court that Father's Fiancée loves the Child and treats him as her own. Father's Fiancée not only helps provide for the Child's basic needs, but also provides the Child with the love, comfort, and security the Child deserves. Father's Fiancée has stepped in and has assumed the parental responsibilities that Mother has utterly failed to perform and has evidenced a settled purpose of relinquishing

The Court is satisfied that Father's Fiancée's adoption of the Child is in his best interest and will provide him with the stability and security the Child needs and deserves to have throughout his childhood.

Conclusions of Law

1. The Court finds that TL and JB have established by clear and convincing evidence that KH's parental rights to CL should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that TL and JB have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of CL will best be served by termination of KH's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

Department of Human Services
Pennsylvania Adoption Information Registry
P.O. Box 4379
Harrisburg, PA 17111
Telephone: 1-800-227-0225

Medical history information forms may also be obtained locally by contacting one of the following agencies:

1. Children & Youth Social Service Agency
2. Any private licensed adoption agency
3. Register & Recorder's Office
4. Online at www.adoptpakids.org/Forms.aspx .

By the Court,

Joy Reynolds McCoy, Judge