

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

IN RE: : **NO. 6536**
:
JND, :
:
minor child, :
:

OPINION AND ORDER

AND NOW, this 3rd day of **July, 2017**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by JCC, Jr. ("Stepfather") and HC("Mother"), husband and wife, on or about March 13, 2017, with regard to Mother's daughter, JND ("Child"), born May 3, 2005. Stepfather and Mother seek to terminate the parental rights of the Child's biological father, ES ("Father"), as a prerequisite to having the child adopted by Stepfather. Mother and Stepfather were unable to locate Father, and therefore service of Notice of the Petition for Involuntary Termination of Parental Rights and date of the pre-trial conference was made via publication in the Williamsport Sun-Gazette on April 7, 2017, and April 8, 2017, and in the Lycoming Reporter on April 7, 2017, and April 14, 2017. Father did not appear for the pre-trial conference on May 5, 2017, and at that time a hearing on the Petition for Involuntary Termination was scheduled for June 27, 2017. Service was again made via publication in the Williamsport Sun-Gazette on June 8, 2017, and in the Lycoming Reporter on June 9, 2017. Additionally, counsel for Mother and Stepfather sent notice via certified mail to Father's last known address. Attempts at delivery were made on May 19, 2017, and May 24, 2017, before being returned as unclaimed on June 3, 2017.

A hearing on the Petition for Involuntary Termination was held on June 27, 2017. Mother was present with her counsel, Patricia A. Shipman, Esquire. Stepfather participated by telephone. Father did not appear for the hearing, however, the Court is satisfied that service by publication was properly effectuated.

Finding of Facts

1. JND ("Child") was born on May 3, 2005.
2. The Child currently resides with Mother, HC ("Mother"), and Stepfather, JCC, Jr. ("Stepfather"), at 1515 Princeton Avenue, Williamsport, Pennsylvania.
3. The Child's Father is ES ("Father"). Father's current residence is unknown, but his last known address is 1426 Park Avenue, Williamsport, Pennsylvania.
4. Mother and Father were not a couple at the time the Child was born.
5. Mother testified that Father's contact with Child after she was born was sporadic. Father would randomly call and ask to see the Child and would only stay for approximately ½ hour each time.
6. Mother estimates that for the first 3 years of the Child's life, Father would see her on average one time per month. Mother testified that she believed Father would only call her to see the Child when he was having trouble in his other relationships.
7. Father never spent any time with Child outside Mother's presence.
8. Father's family met the Child when she was an infant but no efforts have been made by his Family to maintain a relationship with her.
9. Father never bought diapers or formula or provided any other basic necessities for Child.

10. Mother attempted to file for child support after paternity was established, but Father filed for SSD immediately thereafter. Father has never paid any type of child support.
11. Father purchased a Christmas gift in 2008 and brought it over for the Child in January or February of 2009. That was the last time Father saw the Child.
12. Aside from one Christmas gift, Father has never purchased cards or gifts for the Child's birthday or other holidays.
13. Father has not seen the Child since January or February of 2009, when the Child was approximately 3 ½ years old.
14. Neither Father nor any of his family members have attempted to contact Mother by telephone to inquire about the Child since 2009, despite Mother having the same phone number for the past 20 years.
15. Mother and Stepfather have been married since June 11, 2011.
16. The Child calls Stepfather J. C. and he has been a part of her life since 2009.
17. Child and Stepfather are closely bonded. Stepfather testified that they have a typical father/daughter relationship.
18. Mother testified that the Child would not recognize Father if she were to see him.

Discussion

Mother and Stepfather argue that the basis for termination 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).

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 of the Petition to Involuntary Terminate his parental rights, Father has evidenced a settled purpose of relinquishing parental claim to the Child and has failed to perform his parental duties for a period well in excess of six (6) months. Father has failed to have any contact with Mother or Child since early 2009. Father has not sent gifts or cards to the Child on her birthday or holidays since 2009. Father has not financially supported the Child and never provided any basic necessities such as clothes, diapers, or food for the Child. Father's contact with the Child for the first 3 ½ years of her life was limited to approximately one time per month. Father never spent any time with the Child outside of Mother's presence. Father never filed an action for periods of custody of the Child.

Father has failed to show even a passive interest in the Child during the past 8 years. A parent has an affirmative duty to be part of a child's life; Father has not met this affirmative duty. The Court finds that there have been no barriers placed in Father's path to stop his relationship with his daughter. Father has not contacted Mother to request to spend time with Child, or to inquire about her health or education despite Mother having the same phone number for 20 years. The Court finds that Mother placed no obstacles in Father's path which would prevent him from exercising his parental rights, privileges, and obligations with regard to Child. It appears to this Court that Mother and Stepfather have established that Father has simply 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 Father 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)). A parent’s own feelings of love and affection for a child do not prevent termination of parental rights. **In re: L.M.**, 923 A.2d 505, 512 (Pa. Super. 2007).

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 that Father has no bond with the Child. The only consistent father that the Child knows is Stepfather. Father has not seen the Child since February of 2009, when the child was less than four years old. Further, termination of his rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and the Child. The Child would not recognize Father due to the limited contact he had with her from birth until 2009 and the passage of time since his last contact with her. It is evident to the Court that Stepfather loves and cares for Child and treats her as his own. Stepfather has stepped in and provided the love and support Child needs and has assumed the parental responsibility that Father has evidenced a settled purpose of relinquishing.

The Court is satisfied that both Mother and Stepfather understand the potential consequences of allowing Stepfather to adopt Child, and that termination of Father's parental rights and allowing the adoption by Stepfather to proceed is in the best interest of the Child.

Conclusions of Law

1. The Court finds that JCC, Jr. and HC have established by clear and convincing evidence that ES's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that JCC, Jr. and HC have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of JND will best be served by termination of ES's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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DECREE

AND NOW, this 3rd day of **July, 2017**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of ES, held on June 27, 2017, it is hereby ORDERED and DECREED:

- (1) That the parental rights of ES be, and hereby are, terminated as to the child above-named;
- (2) That the welfare of the child will be promoted by adoption; that all requirements of the Adoption Act have been met; that the child may be the subject of adoption proceedings without any further notice to the natural father.

NOTICE TO NATURAL PARENTS
PENNSYLVANIA ADOPTION MEDICAL HISTORY REGISTRY

This is to inform you about an adoption law provision relating to medical history information. As the birth parent of a Pennsylvania born child who is being, or was ever adopted in the past, you have the opportunity to voluntarily place on file medical history information. The information which you choose to provide could be important to this child's present and future medical care needs.

The law makes it possible for you to file current medical information, but it also allows you to update the information as new medically related information becomes available. Requests to release the information will be honored if the request is submitted by a birth child 18 years of age or older. The law also permits that the court honor requests for information submitted by the adoptive parents or legal guardians of adoptees who are not yet 18 years of age. All information will be maintained and distributed in a manner that fully protects your right to privacy.

You may obtain the appropriate form for you to file medical history information by contacting the Adoption Medical History Registry. Registry staff are available to answer your questions. Please contact them at:

Department of Public Welfare
Pennsylvania Adoption Information Registry
P.O. Box 4379
Harrisburg, PA 17105-17111
Telephone: 1-800-227-0225

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

1. County 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