

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

IN RE: : **NO. 6521**
:
MMD, :
:
minor child, :
:

OPINION AND ORDER

AND NOW, this 6th day of **February, 2017**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, MG, and her husband, AG, Jr., on or about September 19, 2016. Said petition is in regard to the rights of MG's child, MMD, born September 12, 2005. Mother and her husband seek to terminate the parental rights of the child's biological father, JC, as well as the child's legal father, MD, as a prerequisite to having the child adopted by Mother's husband. A pre-trial hearing on the Petition was held on November 2, 2016, at which time neither Father appeared. An Order was entered by this Court on November 2, 2016, advising both the biological and legal fathers that if either wished to participate in the hearing on the termination of his parental rights and have counsel appointed for him, he must advise the Court in writing by December 1, 2016. Neither father had contact with the Court concerning his participation in the hearing or the appointment of counsel on his behalf. A hearing on the Petition to Involuntarily Terminate the Parental Rights of the biological father and the legal father was held on January 31, 2017. Neither father appeared at the hearing, despite the Court finding that each father had proper notice of the hearing. Mother, MG, and husband, AG, Jr., appeared with their counsel, Trisha Hoover Jasper, Esquire.

Finding of Facts

1. MMD ("Child") was born on September 12, 2005. The child currently resides with her mother, MG ("Mother"), and Mother's husband, AG, Jr. ("Husband"), at 335 Bayard Street, South Williamsport, Lycoming County, Pennsylvania. Mother and Husband have been married since April 6, 2013. They have lived together with the Child for approximately 7 years.

2. The Child's biological father is JC ("Biological Father"). Father resides in Chinle, Arizona.

3. At the time of the Child's birth, Mother was unmarried. Her paramour at the time, MD ("Legal Father"), who later became her husband, is listed as the Child's father on her birth certificate and signed a legal acknowledgment of paternity.

4. Mother and Legal Father were eventually married and resided together with the Child until their marriage ended in 2008, when the Child was approximately 2 ½ years old.

5. After Mother and Legal Father separated, he took a DNA test, the results of which showed that he is not Child's biological father.

6. Mother testified that the last time the Child saw Legal Father was approximately 6 or 7 years ago.

7. Legal Father filed a Complaint for Custody on February 22, 2012, to Lycoming County Docket #09-20,563. A custody conference was held on April 3, 2010.

8. At the conference, the Family Court Master raised the question of whether Legal Father had standing to pursue custody of the Child, as the Lycoming County Domestic Relations Office indicated that Legal Father's formal acknowledgment of

paternity was never filed with the Commonwealth of Pennsylvania. A hearing on the issue was scheduled for July 2, 2012, and subsequently continued until August 1, 2012.

9. On August 1, 2012, a Praecipe to Settle and Discontinue was filed by Father's counsel and there have been no subsequent filings by either Mother or Legal Father with regard to custody of the Child.

10. Legal Father last saw the Child approximately 5 years ago.

11. To her knowledge, Legal Father does not have Mother's phone number or address; however he has occasionally contacted her through Facebook to inquire about the Child. Legal Father does not request to speak to or see the Child.

12. On occasion, Legal Father has sent Mother money via Facebook. There is no formal Order or agreement for the payment of child support.

13. When Legal Father was proven not to be Child's biological Father, Mother was instructed by the Lycoming County Domestic Relations Office to file a child support complaint against the man she believed was the biological father.

14. Mother filed a child support complaint against JC, who was confirmed through DNA testing to be the Biological Father of the Child.

15. A support Order was entered against Biological Father on July 19, 2010, and continued until it was suspended on April 13, 2015, at the request of Mother.

16. Biological Father has no contact with the Child.

17. To Mother's knowledge, Biological Father does not have her phone number or address, and has not attempted to contact Mother through any form of social media.

18. Mother attempted to reach out to members of Biological Father's family through Facebook, but testified that his mother verbally attacked her and did not ask about the Child.
19. Biological Father has never sent the Child cards or gifts for birthdays or holidays.
20. Mother's Husband has been involved with the Child for 8 years, and has lived with Mother and Child for approximately 7 years.
21. Mother's and Husband have blended their families and Child has step and half-siblings.
22. Mother's Husband has a father/daughter relationship with the Child. He loves her and supports her and considers her his daughter.
23. Child has no relationship with either the Legal Father or the Biological Father. She does not talk about them or ask about them. She considers Mother's Husband her father.

Discussion

Mother and Husband 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). In the instant case, both the Legal Father and the Biological Father have demonstrated both. 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 of the Petition to Involuntary Terminate his parental rights, Legal Father has evidenced both 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. Legal Father's last in-person contact with the Child was 6 or 7 years ago, as testified to by Mother. Legal Father last requested to see the Child approximately 5 years ago. Legal Father filed a Custody action regarding the Child in 2012. When the Court scheduled a hearing to determine whether Legal Father had standing to seek custody, Legal Father discontinued the action, and did not further pursue periods of custody. Mother testified that she has had occasional contact with Legal Father through Facebook, wherein Father would ask about the Child, but never requested to speak with the Child directly, or to see the Child. Legal Father has not financially supported Mother and Child with any regularity, nor has he sent the Child cards, letters, or gifts for birthdays or holidays with any consistency.

Biological Father has had even less involvement in the Child's life than Legal Father. Mother testified that he has made no attempts to contact her or the Child, nor has he ever sent cards, letters, or gifts to the Child for her birthday or holidays. Biological Father did pay child support for a time as per a Court Order, but the obligation was suspended at Mother's request in 2015. Biological Father has not provided any financial support for the Child since that date.

A parent has an affirmative duty to be part of a child's life; Legal Father has not met this affirmative duty. Legal Father has shown, at best, a passive interest in the Child during the past several years. The Court finds that although he may not have her current address or cell phone number, Mother placed no obstacles in Legal Father's

path which would prevent him from exercising his parental rights, privileges, and obligations with regard to Child. Legal Father's contact with Mother in the six months preceding the filing of the Petition to Involuntarily Terminate his Parental Rights was limited to asking, via Facebook, how the Child was doing. Legal Father had no in-person contact with the Child in the past 6 or 7 years.

Biological Father also has not met the affirmative duty to be a part of Child's life. Although Mother does not believe that he has her current address or cell phone number, she has not attempted to prevent Biological Father from taking an active role in the Child's life. In fact, she testified that she reached out to his relatives, and was met with resistance from them.

This Court finds that Mother and her Husband have established that both the Legal Father and the Biological Father have evidenced a settled purpose of relinquishing parental claim to the Child and have 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, both Legal Father and Biological 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 Child has no bond with either the Legal Father or the Biological Father. The Child refers to Mother’s Husband as “Dad.” Legal Father has not seen Child in 6 or 7 years, and it has been even longer since Biological Father has seen the Child. Termination of either Father’s rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between

either Legal Father or Biological Father and the Child. Child is bonded to Mother's Husband, who has lived with Child for approximately 7 years, and who is the only father-figure the Child would know. It is evident to the Court that Mother's Husband loves and cares for Child and treats her as his own. They have a blended family and offer security and stability to Child. Mother's Husband has stepped in and provided the love and support Child needs and has assumed the parental responsibility that both the Legal Father and the Biological Father have evidenced a settled purpose of relinquishing.

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

Conclusions of Law

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

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

3. The Court finds that MG and AG, Jr. have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of MMD will best be served by termination of MD's parental rights.

4. The Court finds that MG and AG, Jr. have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of MMD will best be served by termination of JC's parental rights.

Accordingly, the Court will enter the attached Decrees.

By the Court,

Joy Reynolds McCoy, Judge

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

IN RE: : **NO. 6521**
: :
MMD, : :
: :
minor child, : :

DECREE

AND NOW, this 6th day of **February, 2017**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of MD, held on January 31, 2017, it is hereby ORDERED and DECREED:

- (1) That the parental rights of MD 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 legal father.

By the Court,

Joy Reynolds McCoy, Judge

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

IN RE: : **NO. 6521**
: :
MMD, : :
minor child, : :

DECREE

AND NOW, this 6th day of **February, 2017**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JC, held on January 31, 2017, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JC 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