

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

IN RE: : **NO. 6509**
:
MMS, :
:
minor child :

OPINION AND ORDER

AND NOW, this 7th day of **February, 2017**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, CS, and her paramour, GRH, on or about May 25, 2016. Said petition is in regard to the rights of CS's child, MMS, born April 26, 2010. Mother and her paramour seek to terminate the parental rights of the child's biological father, TJL, as a prerequisite to having the child adopted by Mother's paramour.

A pre-trial hearing was held on July 5, 2016, at which time Melody Protasio, Esquire, appeared by telephone on behalf of the Petitioners, and Robert Cronin, Esquire, appeared on behalf of Father. A hearing on the Petition to Involuntarily Terminate the Parental Rights of Father was scheduled for November 1, 2016. On October 31, 2016, Father's counsel requested a continuance of the hearing date, and simultaneously filed a Motion for Leave of Court to Withdraw from Representation, due to a conflict of interest. A hearing on the Petition to Withdraw as Counsel was held on November 15, 2016, with Bradley Hillman, Esquire, appearing on behalf of the Law Firm of Casale and Bonner. Father did not appear at this hearing, but Attorney Hillman noted for the record that Father did not object to the firm withdrawing due to a conflict. By Order dated November 15, 2016, Father was informed of the time, date, and location of

the hearing on the Petition to Involuntarily Terminate his Parental Rights, as well as the right to have counsel appointed on his behalf. Father was directed to contact the Court no later than December 2, 2016, if he wished to have counsel appointed on his behalf. This Court did not hear from Father, either by telephone, or in writing, regarding his desire to participate in the hearing.

A hearing on the Petition was held on February 1, 2017. The Court finds that Father had proper notice of the hearing. Father did not appear at the time set for the hearing. Mother, CS, and paramour, GRH, appeared with their counsel, Melody Protasio, Esquire. The Guardian Ad Litem, Patricia Shipman, Esquire, also appeared.

Finding of Facts

1. MMS (“Child”) was born on April 26, 2010, in Williamsport, Pennsylvania. The child currently resides with her mother, CS (“Mother”), and Mother’s paramour, GRH (“Paramour”), in McCutchenville, Ohio. Mother and Paramour have lived at this location with the Child since July of 2016.

2. The Child’s Father is TJL (“Father”). Father resides at 1025 Lower Bodines Road, Trout Run, Pennsylvania.

3. Mother and Father were never married. They were involved for approximately 9 months before Mother got pregnant.

4. After the birth of the Child, Father lived with Mother and the Child and Mother’s parents for a short time.

5. Father subsequently obtained employment with a gas company, which required him to travel frequently.

6. A few months after gaining employment, Father left the home of Mother's parents and moved back to his own parents' home, and continues to reside there.

7. Father saw the Child every few weeks, usually when Mother would take her to the home of his parents.

8. The last time Father saw the child was 3 or 4 years ago, on Christmas. Mother had to ask Father if he was planning to see the Child.

9. Prior to the visit at Christmas, Father had gone a year without seeing the Child.

10. Mother testified that Father has never sent Child cards or gifts for her birthday or on holidays.

11. Mother filed an action for child support against father. At least three bench warrants were issued due to Father's failure to meet his obligation.

12. Mother testified that there are currently arrears in the amount of approximately \$1,000, which are ordered to be paid at a rate of \$100 per month. Defendant pays \$25.00 per week towards the arrearages.

13. Father was incarcerated on several occasions throughout Child's life, including a time spent in state prison. Mother testified that Father never attempted to contact her or the Child while he was incarcerated. Mother also testified that she never contacted any of the institutions to request that she not be contacted by Father.

14. Father filed a Petition for Custody on April 4, 2016, to Lycoming County Docket #16-20,457. Mother's counsel filed an Answer and Expedited Motion to Stay on May 26, 2016.

15. The custody conference has been continued numerous times pending resolution of the Petition for Involuntary Termination of Parental Rights.

16. Mother's Paramour has lived with Mother and Child for about one year.

17. Mother's Paramour acts as a father figure to Child. Child refers to Mother's Paramour as "Dad." Child does not know Father and has no relationship with him.

18. Mother's Paramour financially supports Mother and Child and the GAL testified that they are very bonded as a family unit.

Discussion

Mother argues 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, Father

has 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 filing of the Petition to Involuntarily Terminate Parental Rights, 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. Father's last in-person contact with the Child was over three years ago. Father is in arrears on his child support obligation. Mother indicated she receives a payment of \$25.00 per week towards these arrearages.

A parent has an affirmative duty to be part of a child's life; Father has not met this affirmative duty. Father has not even shown a passive interest in the Child during the past 3 years. Father has not contacted Mother to request to spend time with Child, or to inquire about her health or education. There was testimony from Mother that Father spent considerable time incarcerated over the past few years. When questioned by the GAL, Mother testified that Father did not attempt to contact her from any of the institutions where he was incarcerated, nor did she contact the institutions to request that he be prohibited from contacting her. 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. Father's sole contact with Mother in the six months preceding the filing of the Petition to Involuntarily Terminate his Parental Rights was to file a Complaint for Custody. Why Father waited nearly three years from the last time he saw the Child to file for custody is unclear, but the GAL testified that she felt, after speaking with Father, that his reasons given for not being more involved in Child's life were not good excuses.

It appears to this Court that Mother and Paramour 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, despite being properly served, 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 Child refers to Mother's Paramour as "Dad," and does not know her biological Father. Father has not seen Child in over three years, and that was only because Mother reached out to him to spend time with the Child on Christmas. Prior to that, Father had gone a year without seeing the Child. Termination of Father's rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and the Child. Child is bonded to Mother's Paramour, who has lived with Child for over a year, and who is the only father-figure the Child would know. It is evident to the Court that Mother's Paramour loves and cares for Child and treats her as his own. Mother's Paramour 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.

Although Mother and her Paramour are not currently married, they have resided together for more than a year. The GAL testified that Mother, her Paramour, and the Child appear to be a very bonded family, and supports the termination of Father's parental rights so that the adoption may proceed. The Court is satisfied that both Mother and her Paramour understand the potential consequences of allowing Paramour to

adopt Child, and that termination of Father's parental rights and allowing the adoption by Paramour to proceed is in the best interest of the Child.

Conclusions of Law

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

2. The Court finds that CS and GRH have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of MMS will best be served by termination of TJL's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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

IN RE: : **NO. 6509**
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DECREE

AND NOW, this 7th day of **February, 2017**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of T JL held on February 1, 2017, it is hereby ORDERED and DECREED:

- (1) That the parental rights of T JL 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