

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

IN RE: : **NO. 6575**
: :
B.A.R., : :
: :
minor child, : :

OPINION AND ORDER

AND NOW, this 20th day of **April, 2018**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, AF, and her husband, DF, on December 18, 2017. Said petition is in regard to the rights of AF's child, BAR, born October 17, 2007. Mother and her husband seek to terminate the parental rights of the child's biological father, SPR, as a prerequisite to having the child adopted by Mother's husband. The Petition for Involuntary Termination of Parental Rights and Petition for Adoption were personally served upon SPR on January 27, 2018, as evidenced by an Affidavit of Personal Service filed on January 29, 2018. A pre-trial conference on the Petition was held on March 2, 2018. Father did not appear at the pre-trial conference. An Order was entered by this Court on March 2, 2018, advising SPR that if he 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 March 22, 2018. SPR had no 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 was held on April 18, 2018. SPR did not appear, despite the Court finding that he had proper notice of the hearing. AF and DF appeared with their counsel, Meghan Engleman Young, Esquire.

Finding of Facts

1. BAR ("Child") was born on October 17, 2007. The child currently resides with his mother, AF ("Mother"), and Mother's husband, DF ("Husband"), at 48 Windy Lane, Montgomery, Lycoming County, Pennsylvania. Mother and Husband have been married since October 15, 2016. Husband has lived with Mother and the Child since 2010.
2. The Child's biological father is SPR ("Father"). Father resides at 152 Boak Avenue, Lot 63, Hughesville, Pennsylvania.
3. At the time of the Child's birth, Mother and Father were unmarried but in a relationship. Although they did not live together, Father saw the Child fairly regularly for the Child's first year.
4. Mother and Father's relationship ended in approximately October 2008.
5. After Mother and Father's relationship ended in 2008, Father had no further contact with the Child.
6. Mother filed a Petition for Emergency Custody on July 24, 2009, to Lycoming County Docket #09-20,926, alleging that Father was a danger to himself, had attempted suicide, was involved with drugs, had been arrested, and was getting evicted from his home.
7. After an ex-parte hearing held on July 24, 2009, Mother was granted temporary sole legal and physical custody of the Child pending a full hearing.
8. On July 29, 2008, following a hearing in which Mother testified and Father did not appear despite being served with notice, Mother's Petition for Emergency

Custody was granted. Mother was granted sole physical and legal custody of the Child, unless and until Father petitioned the Court to modify the Order.

9. Father pled guilty to Simple Assault at Lycoming County Docket #CR-1446-2009 and was sentenced to 2 years probation for the incident to which Mother referred in her Petition for Emergency Custody.

10. Father has never filed a Petition to Modify the Custody Order dated July 29, 2008.

11. Father has never paid child support for the Child.

12. Mother has only seen Father in passing since their relationship ended. Father has never inquired about the Child.

13. Father knew how to get in touch with Mother if he wanted to inquire about the Child's health and well-being or make arrangements to see the Child.

14. Father has never sent the Child cards or gifts for birthdays or holidays.

15. Mother's Husband has been involved with the Child since February of 2010, and has lived with Mother and Child since shortly thereafter.

16. The Child calls Mother's Husband "Dad."

17. Mother's Husband has a father/son relationship with the Child. Husband loves and supports the Child and considers him his son.

18. Child has no relationship with Father. He considers Mother's Husband his 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, 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 Petition to Involuntary Terminate his 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 approximately 10 years ago, as testified to by Mother. Although Mother and Father did not reside together after the Child's birth, Mother testified that Father saw the Child on a regular basis. However, when Mother and Father's relationship ended in October of 2008, so too did Father's relationship with the Child. Father has not financially supported Mother and Child, nor has he sent the Child cards, letters, or gifts for birthdays or holidays. Father has not attended any medical appointments or school functions for the Child. In fact, Father has not even made any attempts to contact Mother to inquire about the Child. Mother testified that she has seen Father in passing, but instead of speaking to her Father merely made hand gestures at Mother and her Husband.

A parent has an affirmative duty to be part of a child's life; Father has clearly not met this affirmative duty. Father has not even shown a passive interest in the Child for most of the Child's life. Father failed to file a petition with the court to re-establish his

custody rights. Father failed to reach out to Mother to inquire about the Child despite knowing how to contact her. Father failed to play a role in the Child's medical and educational decisions. Father failed to even send the Child birthday and Christmas gifts. The Court finds Mother placed no obstacles in Father's path which would prevent him from exercising his parental rights, privileges, and obligations with regard to Child.

This Court further finds that Mother and her Husband have clearly established that Father 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, 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 Father. The Child refers to Mother’s Husband as “Dad.” Father has not seen or spoken to the Child since his and Mother’s relationship ended. 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, and there has been no relationship between the two since the Child was approximately one year old. Child is bonded to Mother’s Husband, who has lived with Child for more than 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 him as his own. Mother’s Husband has stepped in and provided the love and support Child needs and has assumed the parental responsibilities that Father has utterly failed to perform and has 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 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 AF and DF have established by clear and convincing evidence that SPR's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that AF and DF have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of BAR will best be served by termination of SPR's parental rights.

Accordingly, the Court will enter the attached Decrees.

By the Court,

Joy Reynolds McCoy, Judge

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DECREE

AND NOW, this 20th day of **April, 2018**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of SPR, held on April 18, 2018, it is hereby ORDERED and DECREED:

- (1) That the parental rights of SPR 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