

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

IN RE: ADOPTION OF : **NO. 6537**
:
CWT, JR., :
:
minor child, :
:

ORDER

AND NOW, this 18th day of **January, 2018**, before the Court is a Petition for Involuntary Termination of Parental Rights filed on March 23, 2017, by GLN and CAK, with regard to the parental rights to the minor child, CWT, Jr. Petitioners seek to terminate the parental rights of the child's biological Father, CWT, Sr., as a prerequisite to Mother's fiancé, CK, adopting the child. The hearing was originally scheduled for September 13, 2017, but was continued at the request of counsel for CWT, Sr., due to his unavailability as a result of his military training. A hearing on the Petition was held on January 9, 2018, at which time Petitioners were present with their counsel, Michael Morrone, Esquire; Father was present with his counsel, Brandon Schemery, Esquire; and the Guardian Ad Litem, John Pietrovito, Esquire, was present on behalf of the child. The child, CWT, Jr., was not present at the hearing.

Findings of Fact

1. CWT, Jr. ("Child") was born on July 3, 2013, in Pennsylvania. He currently resides with GLN ("Mother"). Mother's mailing address is 183 S. Main Street, Hughesville, Pennsylvania.
2. Mother's fiancé, CAK ("Fiancé") (collectively with Mother, "Petitioners"), resides at 394 E. Penn Street, Muncy, Pennsylvania.

3. Mother and Child spend the majority of their nights at Fiancé's home.
4. Father resides at 382 S. Main Street, Hughesville, Pennsylvania.

However, he is a member of the United States Marines and is currently stationed in Yuma, Arizona.

5. Father expects to be stationed in Yuma, Arizona, for at least 2 ½ more years.
6. Father testified that he can expect to accrue between 70 and 80 days of leave per year.
7. Father currently does not receive any additional pay from the military for a dependent child.
8. Mother and Father were never married. They were together as a couple for approximately 2 years prior to Child's birth, and for the first 2 to 2 ½ years after his birth.
9. Father played an active role in the Child's life during his first two years, while he and Mother resided together with the Child.
10. Father's last physical contact with the Child was in June of 2016. That visit was supervised by Father's father.
11. Father testified that he texted Mother to see the Child but she did not respond. Father also testified that he attempted to contact Mother to get copies of the Child's birth certificate and social security number for his military enlistment forms, and Mother did not respond to those requests.
12. Neither Mother nor Father filed a Complaint for Custody with the court.
13. Mother has never filed for, and Father has never paid, child support.

14. Father did not purchase gifts for the Child, nor did he send cards or letters to the Child.

15. Father did not go to Mother's home in the six months prior to the filing of Mother's Petition in an attempt to gain access to the Child.

16. The last contact paternal grandmother and her husband had with the Child was in July of 2016, at the Child's 3rd birthday party hosted by Mother.

17. Paternal grandmother made several attempts to spend time with the Child after that time, but Mother did not respond to her texts.

18. Paternal grandfather filed a custody action in Lycoming County when his requests for time with the Child were unanswered. The Complaint for Custody was dismissed on June 15, 2017, as grandfather did not have standing under 23 Pa.C.S.A. §5324 or §5325.

19. Father enlisted in the military in October of 2016. He did not start basic training until January 21, 2017.

20. On November 30, 2016, Mother filed a Petition for Voluntary Termination of Parental Rights, alleging that Father was voluntarily relinquishing his parental rights. Mother's Petition was withdrawn on December 14, 2016.

21. Father testified that he never agreed to, nor even considered, voluntarily terminating his parental rights at any point in time.

22. Mother and her Fiancé started dating in December of 2016.

23. Child began to call Mother's Fiancé "Dad" a few months into their relationship. Both Petitioners testified that the Child did this independently, without any prompting from them.

24. Mother's Fiancé testified that he did not correct the Child because the Child had no father figure at the time and he had every intention of marrying the Child's mother.

25. Mother's Fiancé is 25 years old and has no children of his own.

26. Mother and her Fiancé are engaged to be married on August 18, 2018.

27. Mother's Fiancé is aware of and understands the rights and responsibilities that would accompany adoption of the Child.

Discussion

Petitioners assert that the grounds for termination of the Father's parental rights may be found in 23 Pa.C.S. §2511(a)(1) and (a)(2), which read:

§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.

(2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

A court may terminate parental rights under §2511(a)(1) where a parent demonstrates a settled purpose of relinquishing parental claim to a child **or** fails to perform parental duties for at least six months prior to filing for the termination petition. In the Interest of C.S., 761 A.2d 1197, 1201 (Pa. Super. Ct. 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, 872 A.2d 1200 (2005) citing In Re: D.J.S., 737 A.2d 283, 286 (Pa. Super.1999).

With respect to 23 Pa.C.S. § 2511(a)(2), the relevant inquiry before the court is as follows:

In order to terminate parental rights pursuant to 23 Pa.C.S. §2511(a)(2), the following three elements must be met: (1) repeated and continued incapacity, abuse, neglect or refusal; (2) such incapacity, abuse, neglect or refusal has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being; and (3) the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.

In re Adoption of M.E.P., 825 A.2d 1266, 1272 (Pa. Super. 2003). This Court has long recognized that "[p]arents are required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities." In re: A.L.D., 797 A.2d 326, 337 (Pa. Super. 2002).

In order to determine 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 characterizes 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).

"[P]arental rights are not preserved... by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with his or her immediate physical and emotional needs."

In re Adoption of Godzak, 719 A.2d 365, 368 (Pa.Super.1998) (citation omitted).

There was no dispute among the parties, or their witnesses, that the last time Father had physical contact with the Child was in June of 2016. At that time, Father and the child visited Reptiland, and the visit was supervised by paternal grandfather. The parties testified that they all felt that having the visit be supervised was in the best interest of the Child due to an incident that occurred a few weeks prior, wherein Father was walking with the Child along a dangerous road while under the influence of drugs and/or alcohol.

Father testified that he repeatedly tried to contact Mother to request time with the Child after his last visit. Mother disputed this, and indicated that Father did not reach out to her after June of 2016, by phone, text, social media, or in person, despite knowing where she and her parents resided, and that her phone number had been the same since she was 16 years old. Mother testified that Father did not have a working cell phone for a time, and she would occasionally get texts from random numbers asking for the Child’s social security number and birth certificate, but that Father never identified himself as the sender of those texts. Mother testified that, despite her concerns about

Father's involvement with drugs and alcohol, she would not have prevented him from seeing the Child from June of 2016 until he left for basic training if she was assured he was either getting the help he needed or that the visits would be supervised. She agreed to the supervised visit in June of 2016 because she felt it was in everyone's best interest to be cordial despite the previous incidents.

Despite Father's allegations of unsuccessful attempts to see his Child, Father testified that he never filed a custody action with the court in order to establish set periods of physical custody. In fact, Father testified that after several attempts at contacting Mother and receiving no response, his attempts decreased until he finally "gave up" and stopped contacting her. Furthermore, Father testified that he did not provide any financial support to Mother, nor did he purchase any gifts for the Child or send the Child any cards or letters from the time he last saw the Child until the filing of Mother's Petition in March of 2017. Father did not attempt to see the Child over the Christmas holiday or before he left for a lengthy period of time for basic training.

Paternal grandmother, KT, testified that in the beginning of Child's life, Father did everything a typical father would do for the Child, including feeding him, changing diapers, taking him for walks, and playing with him. Paternal grandmother testified that she last saw the Child at his 3rd birthday party in the summer of 2016, to which she was invited by Mother. She further testified that after the birthday party, she would text Mother and ask to spend time with the Child. She indicated that for the remainder of the summer of 2016, Mother would respond with a reason they could not see the Child, but by the fall of 2016, Mother would not respond at all to her texts.

Paternal grandmother's husband, John Aronson, testified that he saw Father take care of the Child for the first 2-3 years of his life, and that they had a very loving relationship. He testified that Father devoted his full attention to the Child and conducted himself in a very "fatherly" manner. He saw Father and the Child go for walks and play sports, and he had no doubt that there was a bond between Father and the Child. He testified that in December of 2016, he personally dropped off presents for the Child from paternal grandmother at Mother's home. Mother testified that she never received gifts for the Child from anyone other than DT, the Child's paternal grandfather.

Mr. Aronson testified that since joining the military, Father has made a complete life change. He indicated that Father had to "want it," and that one can't make such drastic changes "on a whim." On cross-examination, Mr. Aronson testified that he was aware that Father's decision to enter the military was more or less the result of an ultimatum given to Father by his grandfather, in order to avoid criminal charges and a potential jail sentence. He further testified that he believes these proceedings amount to mental abuse and has significant concerns for Father and paternal grandmother if Mother's Petition to Involuntarily Terminate Parental Rights is granted, as it "could destroy a family."

When looking at the totality of the circumstances, this Court finds that Petitioners have established, by clear and convincing evidence, that Father's rights should be terminated pursuant to 23 Pa.C.S. §2511(a)(1). The Court finds that as of the date of the filing of the Petition to Involuntarily Terminate his parental rights, Father has failed to perform his parental duties for a period of time in excess of six months. Father's alleged texts to Mother were insufficient attempts to fulfill his parental responsibilities. From

June of 2016 until the time the present Petition for Involuntarily Termination was filed, Father failed to use the court system to preserve and pursue his custody rights. In fact, Father did not even knock on Mother's door, despite living only a few blocks away, to request to see his Child and inquire about his health and well-being. Not even a Petition for Voluntary Termination of Parental Rights filed by Mother in November of 2016, and later withdrawn, provided the catalyst Father needed to make the effort to resume his parental responsibilities. Father attended no medical appointments for the Child, purchased no gifts for the Child, and provided no support to Mother during this time.

There was testimony regarding Father going through a "rough period" prior to his last visit with the Child, and continuing until he left for basic training. During that time, Father experienced several deaths in his family, and was involved with drugs and alcohol. Mother's brother testified that he and Mother's father were helping Father through a rough time in May or June of 2016, which included dragging him out of a drug house two days before his grandmother's funeral. Mother's brother testified that while Father was going through this rough patch, Father never inquired about the Child. During this time, Father essentially ignored all his parental responsibilities. Father enlisted in the military in an attempt to turn his life around during this time, but made no serious attempts to maintain the bond he once shared with the Child. While the Court understands that Father was dealing with personal issues, and commends Father for making positive changes in his life through his military service, it cannot overlook the fact that Father, during his "rough period," was content to let his parental responsibilities fall by the wayside and allow Mother to be solely responsible for the Child's physical and emotional needs. For more than six months prior to the filing of the Petition for

Involuntary Termination of his Parental Rights, Father, without reasonable explanation, has both evidenced a settled purpose of relinquishing parental claim to a child and has refused or failed to perform parental duties.

The Court does not find that Petitioners have established, by clear and convincing evidence, that Father's rights should be terminated pursuant to 23 Pa.C.S. §2511(a)(2). Although there was testimony about Father's issues with drugs and alcohol, the Court does not find that those issues cannot or will not be remedied. Father enlisted in the Marines and successfully completed basic training and military combat training. Father testified that he cannot use illegal drugs while in the military, and that, if he submitted to a drug test at the time of the hearing, it would be negative. The Court finds that Father's issues do not rise to the level of incapacity, abuse, or neglect, the causes of which cannot or will not be remedied. Father has made efforts to remedy his issues; however, those attempts were after a lengthy period of failing to perform his parental responsibilities and failing to utilize all resources to preserve the parental relationship.

As only one subsection of 23 Pa.C.S. §2511(a) must be established by clear and convincing evidence in order to proceed to an analysis under 23 Pa.C.S. §2511(b), and the Court has found that the statutory grounds for termination have been met pursuant to 23 Pa.C.S. §2511(a)(1), the Court must now 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).

The Court is faced with the unenviable task of having to decide whether termination of Father’s parental rights, in order to allow Mother’s Fiancé to proceed with an adoption, is in the Child’s best interest. By all accounts, Father occupied a steady and stable presence in the Child’s life for approximately his first 3 years. There was clearly a bond between the two of them, as Father assumed many of the day-to-day responsibilities of raising the Child. Father presented several photographs of “us as a

family” as evidence. Those photographs depict Father, Mother, and the Child at various family events and activities. Father and the Child appear to share a bond, although the Child appears very young in all of the pictures. At some point Father began to enter a “rough period,” where he became heavily involved in drugs and/or alcohol after he and Mother separated. During that time, Father engaged in some risky behaviors with the Child, which prompted his last visit with the Child, in June of 2016, to have to be supervised by his father.

There was conflicting testimony about the frequency and seriousness of Father’s attempts to maintain a presence in Child’s life following that visit in June of 2016. Father testified that he initially contacted Mother often to request time with the Child, but after never receiving a response, his attempts dwindled and he eventually gave up. Mother testified that she never received any texts or phone calls from Father during that time period asking to see the Child. Father admitted that, between June of 2016 and March of 2017 when Mother’s Petition was filed, he did not personally visit Mother’s house, even though it was in close proximity to his own, to see or make arrangements to see the Child. Father did not file a custody action in court to establish set periods of physical custody. Father left for basic training without attempting to see the Child.

Counsel for Father argued that terminating Father’s rights would result in the Child being precluded from taking advantage of several of the benefits that Father may be entitled to as a result of his military service. Father testified that the Child is a beneficiary of a life insurance policy, would be eligible for TriCare insurance, and may eventually be able to use Father’s G.I. Bill to further his education. While these are valuable benefits, only TriCare is currently available to benefit the Child. The life

insurance proceeds and G.I. Bill are contingent upon Father's continued military service and none of these potential benefits are in any way related to the love, security, and closeness that would be indicative of a bond between Father and the Child.

Although Father's counsel argues that paternal grandparents were essentially "iced out" by Mother when they attempted to contact her to see the Child, and terminating Father's parental rights would "kill off a branch of the family tree," the focus must remain on Father's efforts, or lack thereof, and the effect they had on his bond with the Child and the Child's bond with Father. Although there was at one time a bond between Father and the Child, the GAL questioned, and this Court agrees, whether that bond that did exist in Child's eyes still exists. The last time Child saw Father, he was not quite 3 years old. Several months passed without Father making any substantial attempts to maintain a place of importance in Child's life. Even after Mother filed a Petition for Voluntary Termination of Parental Rights, which was subsequently withdrawn but would have put Father on notice that Mother was seeking to terminate his rights, Father did not make any efforts to see his Child. Given the age at which the Child last saw Father and the amount of time that has passed since the last visitation, this Court finds Mother's testimony that the Child would not even recognize Father to be credible. While Father may believe there is still a bond between himself and the Child, from the Child's standpoint the bond may have severed during Father's period of absence from the Child's life.

Mother and her Fiancé appear to be in a loving, stable, and committed relationship, and are engaged to be married in August of 2018. Both Mother and her Fiancé testified that the Child independently began to call Fiancé "Dad," without any

prompting from them, early on in their relationship. As the GAL opined, the Child deserves a good life, and Mother and her Fiancé are currently providing him with the love, support, and guidance he needs and deserves. Counsel for Father argued that Father, stationed in Arizona for the foreseeable future, would not be seeking primary custody, and therefore the frequency and duration of his visits with the Child would be minimal. Father himself testified that he does not want to interfere with the good thing Mother and her Fiancé have going, but he wants to have an opportunity to maintain a role in the Child's life.

Although Mother certainly did not help the situation when she failed to respond to Father's relatives when they requested to spend time with the Child, Father himself did very little to preserve and nurture the bond that he once had with the Child. There is currently no relationship between Father and the Child. While terminating Father's parental rights may adversely affect Father and cause him emotional distress, the same cannot be definitively said for the Child. Father's inaction from June of 2016 through the filing of the Petition to Involuntarily Terminate Parental Rights opened the door to Mother's Fiancé forming a strong, if accelerated, bond with the Child. Although some concern was expressed regarding the fact that the Petition was filed relatively soon after Mother and her Fiancé started dating, Mother's Fiancé has clearly stepped into the role of a father-figure and has provided the Child with the love, guidance, and support that are essential to his physical and emotional well-being. As the Child is bonded to Mother's Fiancé, and no longer recognizes Father due to his age and the passage of time since their last interaction, terminating Father's parental rights will not destroy something in existence that is necessary and beneficial.

After careful consideration, the Court has determined that terminating Father's parental rights and allowing the Child to be adopted by Mother's Fiancé is in the Child's best interest. This decision, while in the Child's best interest, is likely to impact more than just Father. Several members of Father's family testified about their attempts to see and spend time with the Child since June of 2016. These family members were sincere in their desire to have a relationship with the Child, and all of them live in close proximity to Mother. Paternal grandfather stated, and this Court agrees, that the more good people who are in the Child's life, the better. Although the Court cannot require Mother to take advantage of the additional love, support, and guidance that Father's relatives have offered, she is highly encouraged to do so.

Conclusions of Law

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

2. The Court finds that GLN and CAK have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of CWT, Jr. will best be served by termination of CWT, Sr.'s parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

Department of Public Welfare
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