

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: : **NO. 5487 ADOPTION**
M. B. : **ORPHAN’S COURT DIVISION**
C. B. :

**OPINION PURSUANT TO RULE 1925(a) OF THE
PENNSYLVANIA RULES OF APPELLATE PROCEDURE**

This case concerns a Petition for Involuntary Termination of Parental Rights filed by Lycoming County Children and Youth (hereinafter “the Agency”) on August 28, 2002.

The Agency seeks to terminate the parental rights of S.B. (hereinafter Mother), the natural mother of M.B., born July 31, 1991, currently age 11, and C.B., born February 21, 1995, currently age 7.¹

The Court took testimony on the Agency’s Petition on December 13, 2002, December 16, 2002, December 20, 2002 and February 20, 2003. With agreement of all parties, the Court permitted the parties to submit a written stipulation regarding information from the children. These stipulations were made part of the record on April 17, 2003, and then counsel made final arguments on the Petition. The Agency argued for termination of parental rights. Likewise, the Guardian Ad Litem of the children also argued for termination of parental rights. Mother argued against termination of her parental rights. Subsequent to these arguments, the Court announced its decision granting the Agency’s Petition for Termination of Parental Rights.

¹ The biological father of M.B. is unknown. The biological father of C.B. is S.R., who resides in Philadelphia. S.R. did not appear at the termination hearing and the Court does not believe he has ever had any contact with his daughter. The Court terminated the parental rights of S.R., and he has not appealed.

On or about April 28, 2003, Mother filed a notice of appeal. On April 30, 2003, the Court filed an Order pursuant to Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure requesting matters complained of on appeal. On May 15, 2003, Mother filed a concise statement of matters complained of on appeal raising two issues:

1. Mother avers the Court improperly terminated her parental rights to C.B. and M.B. because the Petitioner presented insufficient evidence at trial to support that finding.
2. Mother avers termination is not in the best interest of C.B. and M.B.

This opinion is written in response to Mother's Matters Complained of on Appeal.

FINDINGS OF FACTS

The voluminous testimony in this case covered a time span from 1990 through 2003, approximately thirteen (13) years. The Court, with the facts still fresh in its mind, orally placed its findings as to the facts of the case on the record when it announced its decision on April 17, 2003. See N.T., April 17, 2003 at 2-28. Because of the lengthy nature of the facts and the significant workload of other cases, the Court will not rewrite our findings of facts, but will rely upon our detailed findings made of record on April 17, 2003. The Court will, however, mention the facts in our discussion of the case.

CONCLUSIONS OF LAW

1. The Agency has shown by clear and convincing evidence that the parental rights of S.B. to M.B. should be terminated based on 23 Pa. C.S.A. § 2511 (a)(2), (5) and (8).
2. The Agency has shown by clear and convincing evidence that the parental rights of S.B. to C.B. should be terminated based on 23 Pa. C.S.A. § 2511 (a) (2).

3. The Agency has shown by clear and convincing evidence that termination of the parental rights of S.B. is in the best interest and welfare of the children.

DISCUSSION

A review of the history of this case illustrates the number of times mother has allowed her drug dependency to take priority and control of her life. In 1990 Philadelphia Children and Youth became involved with Mother because she abandoned her older daughter, Lakeisha,² due to her drug abuse. M.B. was born July 31, 1991, drug dependent because of mother's abuse of cocaine. In October 1991, when M.B. was just three (3) months old, Mother abandoned the children in another parties' home because of her use of drugs. William Tee, her caseworker, noted that Lakeisha and M.B. were unkempt and dirty. Philadelphia Children and Youth placed the children in the custody of the maternal grandmother. One day after checking on the children at grandmother's house, Mr. Tee observed Mother walking down the street. Her eyes were glazed, and she was dirty and emaciated. Mr. Tee believed she was high on drugs, so he tried to get her into drug treatment, but she refused. On October 29, Mother tried to take the children from the grandmother's home, so Philadelphia Children and Youth took custody of the children and placed them in foster homes. Lakeisha and M.B. stayed in foster care for years while continuous services were provided to Mother.

In 1995, Mother moved to the Williamsport area to try to get a handle on her drug problem. She had another son, Bruce, who was born on November 6, 1990 and is not subject of these proceedings, residing with her. In Williamsport the prior pattern continued. On May 28,

² Lakeisha is not a subject of the Agency's Petition to Involuntarily Terminate Parental Rights. She is 18 years of age at this time. Lakeisha was born November 10, 1984.

1995, Bruce, age 4, went to the door of a neighbor, because Mother did not return home.³ C.B. was only three (3) months old at this time and she was left in Mother's apartment by herself. On June 2, 1995, a similar incident occurred where Bruce went to the same neighbor's home at 2:00 a.m. Again, C.B. was left alone in the apartment. When the Williamsport police interviewed Mother, she admitted she left the children alone to get high on drugs. Another such incident occurred on August 14, 1995. Finally, the Agency took custody of the children and placed them in foster homes.⁴

Mother also got into criminal trouble while in Lycoming County to recover from her drug abuse in Philadelphia. In June 1996, Mother was sentenced by the Lycoming County Courts for criminal offenses.

On February 21, 1996, C.B. was returned to Mother's custody from foster care. M.B. was returned to Mother's custody in or about April 1997. For a time Mother seemed to be doing well. The Agency, in fact, closed services on January 28, 1998. It appeared Mother maintained sobriety for a period of time.

Unfortunately, this progress did not last. Eileen Hurly, a guidance counselor at the school MB attended, testified before the Court on December 13, 2002. M.B. entered elementary school in April, 1997 for kindergarten. He remained at Lose School until January 2000. Ms. Hurly had several contacts with Mother about M.B. M.B. was on medication for attention deficit disorder. Mr. Hurly came to the realization that Mother was not giving M.B. the medication in a timely manner. She noticed M.B. was unkempt and did not appear well cared for. Ms. Hurly testified Mother seemed lost about what to do with M.B. Mother seemed neither bonded with

³ See Petitioner Exhibit 12, the June 21, 2002 order where Lycoming County Master, Jocelyn Hartley, painstakingly details mother's history of neglect of the children.

⁴ On January 26, 1996, by Order of Court, Bruce was placed in his father's custody.

M.B. nor interested in trying to solve his problems. Mother told Ms. Hurly M.B. was a “trick” baby born when she was using drugs. The witness was concerned about Mother’s attitude. Ms. Hurly also testified that, in the years M.B. was in her school, Mother’s attitude seemed to get worse. When M.B. was again taken from Mother in 1999 and placed in foster care, Ms. Hurly noticed he was clean, came to school on time and seemed better prepared for school than before foster care.

The situation again hit bottom when the Agency filed a Petition for Emergency custody of Lakeisha, C.B. and M.B. on September 9, 1999. On September 8, 1999, Charles Fisher of the Agency, interviewed M.B. and he indicated Mother was often not at home. He interviewed Lakeisha and she confirmed Mother was using drugs again. Mother was also selling her family’s food stamps for drugs. This relapsed occurred despite the fact that Mother had recently completed an in-patient stay at a drug treatment program. See testimony of Charles Fisher.

Crystal Minier, who took over Mother’s case in October 1999, testified she tried to get Mother back into parenting classes, but she didn’t complete the classes. Mother also lost her housing through an eviction. Mother then resided in the residence of a friend, Lorna Charles. Ms. Minier learned sometime in late 1999 Mother was incarcerated for forgery charges. See criminal case 99-11,872. Finally, in July of 2000 Mother made the decision to enter the Wales Tales Drug Treatment Program in Pittsburgh, Pa. M.B. and C.B. remained in foster care in Lycoming County.

In May 2001, Lakeisha was allowed to go to Pittsburgh to live with Mother on the condition that Mother continued all counseling, including Light of Life Ministries. Mother was also required to cooperate with both the Agency and Allegheny County Children and Youth and provide a safe and stable environment for the children, including adequate housing and food. In

April 2001, Mother had completed the in-patient portion of her program and she obtained housing at the YWCA, called Bridge Housing. The housing was obtained through a program called the Family Links Program. In a permanency hearing held in August 2001, the Agency maintained a goal of reunification of Mother with M.B. and C.B. However, Crystal Minier, Mother's caseworker, was concerned Mother was not making substantial progress, because Mother maintained contacts with unsavory people in Williamsport, increasing her chance of relapse to drugs.

Dr. Richard Dowell became extensively involved in the case at this time. He diagnosed M.B. as suffering from Post Traumatic Stress Disorder, which he felt, was a result of the unstable life M.B. had led.

In September 2001, Mother was terminated from the Light of Life Ministry Program. Mother indicated she did not like this program.

On December 19, 2001, a permanency hearing was held and the Agency, with Dr. Dowell's help, put a plan in place to return M.B. and C.B. to live with Mother in Pittsburgh. C.B. was placed with Mother in December 2001. M.B. was moved to a foster home in Pittsburgh with a detailed schedule of visitation prepared by Dr. Dowell to transition M.B. into residence with Mother. However, with everything lined up for Mother to succeed as a parent for the two children, the situation quickly fell apart. Despite receiving significant therapy and counseling Mother again relapsed into drugs and criminal conduct, including arrests for prostitution and aggravated assault. See the order of Master Joselyn Hartley, Petitioner Exhibit 12, from the permanency hearing held on June 21, 1002, pp. 6-13, where this history is thoroughly detailed.

Mother did not appear for many scheduled visits with M.B., which greatly frustrated him and defeated Dr. Dowell's detailed transition plan. Nicole Amond, caseworker at Family Links, testified before Master Hartley on June 21, 2002, that Mother's participation in counseling and drug and alcohol sessions began declining in January 2002, after the children came to Pittsburgh. See order of June 21, 2002 at 7. Mother admitted to Ms. Amond that she had relapsed into drugs on March 27, 2002. Family Links continued to try to work with Mother, but she failed to cooperate and was discharged on June 18, 2002. Mother's explanation for leaving the Family Links Program was because of a lot of gossip. Mother also complained of the therapist's treatment of her. Mother did not show insight or remorse over her termination from this Program, but tried to blame her failures on others.

Ralph Rivett of Allegheny Children and Youth testified that he went to Mother's home in late May 2002. Mother was not at home. It appeared Lakeisha, age 17, was being placed in the parental role for C.B. On June 7, 2002, Mr. Rivett learned Mother was in prison. Shortly thereafter, Allegheny Children and Youth took emergency custody of C.B. and removed her from Mother's home. M.B. and C.B. were returned to foster care in Williamsport. On October 17, 2002 Mr. Rivett contacted Mother to provide in-home services for her. Mr. Rivett also attempted to set up Mother in a program called Operation Nehemiah. Mother was supposed to contact Andrea Richardson to set up the program, but Mother failed to do so. Since Mother was non-compliant, Mr. Rivett closed services for her as of November 2002.

On December 9, 2002, Mother was found guilty of two (2) counts of prostitution.

Remarkably, Mother was able to gain reentry to Family Links In-Patient Drug Program in late 2002. Lisa Perkins of Family Links testified before the Court on December 20, 2002, that Mother was currently in in-patient treatment. She noted if Mother successfully completed the in-

patient portion of the program, she would go to partial out-patient and Mother could be eligible for housing which she could keep for up to two years.

At this point in time, the termination hearing was continued to February 20, 2003, for completion of testimony. On February 20, 2003, Mother appeared to continue her testimony, which had started on December 20, 2002. Mother confirmed she failed to participate in the Operation Nehemiah Program because she didn't feel it met her needs. Mother admitted she hadn't visited M.B. or C.B. since June 2002 when they returned to Williamsport. She claimed she sometimes missed the bus to Williamsport and she was suffering from depression. Mother told the Court on February 20, 2003 that her life was now very stable and together.

On cross-examination by counsel for the Agency, however, Mother admitted she had again been discharged from the Family Links In-Patient Program in early February 2003. Mother was rather mysterious about why she was discharged. She admitted she was asked to leave the program due to inappropriate behavior against another resident, but she said no more about the circumstances of the discharge. Mother testified she was offered another shelter facility, but she chose not to do this. Despite the information revealed during cross-examination, Mother claimed she was now clean from drugs and she attended narcotics anonymous meetings for drug treatment. Mother also claimed she was getting a one-bedroom apartment in March 2003 and felt she could take the children home with her if she obtained a larger apartment.

Termination of parental rights is an issue of constitutional dimensions because of the fundamental right of an individual to raise his or her own child. However, as the Pennsylvania Superior Court has stated, "A parent's basic constitutional right to custody and rearing of his or her child is converted, upon the failure to fulfill his or her parental duties, to the child's right to have proper parenting and fulfillment of his or her potential in a permanent, health safe

environment.” In re: J.A.S., Jr., 820 A.2d 774 (Pa.Super. 2003), citing In Interest of Lilley, 719 A.2d 327 (Pa.Super. 1998).

The statute permitting involuntary termination of parental rights in Pennsylvania, 23 Pa.C.S.A. §2511, sets forth certain irreducible minimum requirements of care that parents must provide for their children. Parents who cannot or will not meet the requirements within a reasonable time following intervention by the state may properly be considered unfit and may properly have his or her rights terminated. In re J.T. and R.T., 817 A.2d 505 (Pa.Super. 2002).

GROUND FOR TERMINATION

A court may terminate parental rights under 23 Pa. C.S.A. §2511(a)(2) when:

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.

The Court believes the evidence abundantly demonstrates that over a period of years - since 1991 in M.B.’s case and since 1995 in C.B.’s case- Mother has showed a repeated and continued incapacity, which has caused the children to be without essential parental care, control or subsistence necessary for the physical and mental well being of the children. M.B., age 10 at the time of the permanency hearing held on June 21, 2002, has been in foster care 74% of his young life. He remains in foster care. See Petitioner’s Exhibit 12, Order of Family Court Hearing Master Jocelyn B. Hartley, at 12. C.B., age 7 at the time of the permanency hearing has been in foster care 38% of her young life. Both M.B. and C.B. have now spent an additional year each in foster care from the date of the permanency hearing.

The Court also believes the evidence clearly and convincingly proves that the condition and causes of Mother’s incapacity, primarily her long abuse of cocaine, cannot or will not be

remedied by Mother. As commented earlier Mother has been discharged from her latest drug program. She claims she is going to NA meetings on her own when she so desires. The number of resources, services, and programs made available to Mother over the years were enormous. Mother has had numerous opportunities to get help for her drug problem and to learn how to provide a stable environment for her children, but she consistently failed to take advantage of them and, instead, blamed her failures on others. The Court believes that Mother is still at high risk for relapse. These children have waited long enough for a safe, secure and predictable environment while Mother has squandered her opportunities to get her life in order and get her children back. The children should not have to wait any longer; they need a stable and permanent home now.

GROUND FOR TERMINATION §2511(a)(5)

A court may terminate parental rights under 23 Pa. C.S.A. §2511(a)(5) when:

The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

The Agency filed its petition to terminate Mother's parental rights on August 28, 2002.

M.B. has not been in Mother's custody since September 1999. Unquestionably, M.B. has been removed from the care of Mother for more than six months.⁵ It is also clear that the conditions, which led to the placement and removal of the children, continue to exist. The efforts of the

⁵ C.B. was last removed from Mother's custody on or about June 12, 2002. Although she had not been removed from Mother's custody for six months as of the Agency's filing its petition, she had been removed for over 10 months by the time the Court entered its Order terminating Mother's rights on April 17, 2003.

Agency to reunite Mother with C.B. and M.B. in Pittsburgh in early 2002, despite all support and counseling, quickly failed and Mother relapsed into cocaine use and criminal activity. Mother was terminated from an in-patient drug program as recently as February 2003. There is no reason to believe after all these years and programs that Mother will soon remedy the conditions, which led to removal of the children from her care.

GROUND FOR TERMINATION §2511(a)(8)

A Court may terminate parental rights under 23 Pa. C.S.A. §2511(a)(8) when:

The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

M.B. has been removed from the care of the parent for a period of more than 12 months.⁶ M.B. has been in foster care since September 1999. Although M.B. was moved to a foster home in Pittsburgh in 2001 so he could have contact with Mother and they could eventually be reunited, Mother missed many visits and relapsed to using drugs. Mother did not regain custody of M.B. and after she was kicked out of a drug treatment program in Pittsburgh in 2002, both children were moved back to foster homes in Lycoming County.

For the reasons previously discussed in this Opinion, the Court also believes the conditions, which led to the removal, or placement of the child, continue to exist and termination of parental rights would best serve the needs and welfare of M.B.

⁶ An argument can be made that CB who was removed from Mother's home in Pittsburgh in the summer of 2002 was not removed from placement for 12 months or more at the time the Court granted termination on April 17, 2003. We will not apply §2511(a)(5) or (8) as a ground for termination in regard to CB. The Court will rely upon §2511(a)(2) in regard to C.B.

Needs and Welfare of the Children

Section 2511(b) requires the court to give primary consideration to the needs and welfare of the child before terminating parental rights. 23 Pa.C.S.A. §2511(b). The Court believes that termination of parental rights will best serve the needs and welfare of M.B. and C.B. The Court believes this issue may be the only legitimate issue in this case, because the children love their mother and are bonded to her. After reviewing all the evidence, however, the Court believes the best interests of the children are better served by terminating Mother's rights rather than letting them languish with a Mother who cannot or will not properly care for them, which would harm them further emotionally.

The Court reviewed the stipulations of April 17, 2003 regarding the thoughts of M.B. and C.B. about the possibility of termination of the parental rights of Mother. M.B. does not want his mother's rights terminated. He feels "she can figure herself out." He feels Mother might be able to stop taking drugs and "going out, leaving us alone". M.B. affirmed in his statement that he loves his mother. M.B. indicated he would be angry and anxious about being adopted. M.B. recognized, though, that "if she can't get herself together, her rights would have to be terminated". He also stated he wants "a very good home to stay in and not to be moving around". He added, "it would not be the same though, not the same as with mom".

In her statement C.B. affirmed her love for her mother. She stated, "My mother loves me. I am her daughter. I am her little pumpkin. She never makes me sad." C.B. stated that she does not want a new family and that she does not want to be adopted. However, C.B. also stated she wished she could be adopted by Janice, her current foster mother. When asked which she would choose if given a choice between being adopted by Janice or living with her mother, she answered, "Both, I wish my mom could move in with me and Janice. Lakeisha, too."

Janice Wenrick, the current foster mother for C.B., testified before the Court on December 16, 2002. Initially, Ms. Wenrick was the foster mother for both M.B. and C.B. They were with her from early 2001 until December 2001, when the children were taken to Pittsburgh. Ms. Wenrick described how hurt M.B. was when Mother failed to appear for visits. She noted he developed a lot of anger as a result of his frustrations.

When the children returned from Pittsburgh, they were both placed again with Ms. Wenrick. M.B. had even more anger and resentment, which he took out on C.B. Out of concern for C.B., MB was moved to a different foster home in July 2002, while C.B. stayed with Ms. Wenrick.

Ms. Wenrick noted when the children returned from Pittsburgh and Mother failed to appear for visits, C.B. would cry and M.B. would have a scowl on his face.

Tim Smith of the Agency's evening treatment program works with M.B. 2 – 3 hours per week. He worked with M.B. from July 9, 2001 to January 3, 2002 and from July 29, 2002 to the present. Mr. Smith talked with M.B. prior to his going to Pittsburgh and M.B. wanted to be with his mother. While he was hopeful things would work out, M.B. had some doubts whether Mother would do what was expected of her. Upon returning from Pittsburgh, M.B. voiced some fears of adoption but also expressed doubts about Mother making it to a point where he could return to Pittsburgh. M.B. is now in a new foster home and he is doing well there. He is also doing well at Cochran Elementary School. When Mother did not come to Williamsport to visit him after his return here, he was stressed by this conduct. However, he has not asked Mr. Smith about visits recently. M.B. now is interacting well with C.B. and Mr. Smith feels the two children are bonded. He also believes M.B. looks at him as somewhat of a father figure.

Dr. Richard Dowell, a clinical neuropsychologist, evaluated M.B. He is of the opinion that M.B. suffers from post-traumatic stress disorder, because of the instability in his life. His high level of stress is due to his lack of a feeling of safety and security in his life. He also suffers from attention deficit disorder. Dr. Dowell feels that the best treatment for MB is environmental in that he needs a world and a home that is safe, secure and predictable. In assessing what occurred in Pittsburgh and MB's return to foster care in Lycoming County, Dr. Dowell opined that things did not look positive for reunification with Mother.

Bruce Anderson, a licensed psychologist, evaluated Mother in March of 2000. See Petitioner's Exhibit 18 which contains Mr. Anderson's evaluation. At that time, Mr. Anderson talked with Mother about what she would have to do to get her children back with her. She admitted to him that she had been charged in 1995 with reckless endangerment of children related to her drug and alcohol abuse. Mr. Anderson recommended Mother remain clean and sober and cooperate with counseling. He further recommended she obtain stable housing, find employment and follow through with parenting classes.

Mr. Anderson, like Dr. Dowell, stressed the children's current need for permanency and consistency. He feels that the children should not be in a position where they will languish in foster care indefinitely. While acknowledging that adoption and termination of parental rights would be painful for the children, he feels they will be able to make this adjustment. Mr. Anderson also indicated he would be available to the children to work with them in the transition to an adoptive home. Mr. Anderson also noted that the pain of parental termination felt by the children is outweighed by the benefit of a permanent and stable home. He stated that languishing in foster homes is even more traumatic and painful for the children than the transition to adoption.

Kay Carpenter, an Agency caseworker who specializes in adoptions, also testified for the Agency. Her testimony indicated that if the Court granted termination, the children would be registered in a Pennsylvania Adoption Exchange to find adoptive parents for the children. Ms. Carpenter testified that they would look to place M.B. and C.B. in the same adoptive home. She feels that the likelihood of this happening is high, because the children are doing well in school, there are no serious medical conditions and the children have adjusted and are doing well in foster care. She opined that adoption would best meet the needs and welfare of the children.

While it is heart breaking for the Court to see these two young children in the position they are in today, the Court is convinced that termination of parental rights would best serve the needs and welfare of each child. There is obviously some bond that each child has with Mother. It is clear they love her and would like to be with her. However, it is just as clear to the Court from the detailed history of this case that Mother is not ready or able to provide a stable home for the children. If parental rights are not terminated, it is likely the children will languish in foster care until they are too old for adoption. They also would be damaged further by the unstable environment and life that Mother has been living for the past 12 – 13 years. The choices are not easy but the needs and welfare of the children are best served through termination of parental rights so the children can be placed with a stable and positive family who will provide a permanent home. The children need the permanency and stability of a good home and they need it now. To delay would only harm their chances of being able to live a happy and productive life. See In Re: J.A.S. Jr., 840 A.2d 774 (Pa.Super. 2003).

For these reasons, the Court granted the Agency's request for termination of parental rights.

BY THE COURT,

Kenneth D. Brown, Judge

cc: Charles F. Greevy, III, Esquire
Matthew Golden, Esquire
Jason Poplaski, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)