

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
IN RE: : ORPHAN'S COURT DIVISION
H.H. :
MINOR CHILD : NO. 5736

OPINION AND ORDER

Before the Court is the Petition of Lycoming County Children and Youth for involuntary termination of the parental rights of the Natural Mother, L. H. and the Natural father M. H. with respect to their daughter, H.H., born January 24, 1994. A hearing was held on August 23, 24 and 30th, 2004. After hearing, the Court makes the following findings.

1. H.H. (Child) is the biological daughter born of the union of L. H. (Mother), born 7/16/1969 and M. H. (Father), born 5/17/1958.
2. Child has been in the custody and care of the Lycoming County Department of Children and Youth Services (Agency) continuously since March 8, 2002.
3. Agency has had contact with Mother since 1987 with the birth on July 7, 1987 of her first child, T. (Brother). He was hospitalized at approximately 2 months of age due to his "failure to thrive" along with additional medical problems and general household deficiencies. A visiting nurse, parent partner and physical therapist were assigned to help the family. Additional referrals for poor hygiene and feeding issues were also received by the Agency in September 1989 as well as March of 1990.
4. The Agency became involved with Mother when her next child, C. W. (Sister), born March 12, 1990, had on September 4, 1993 apparently consumed 60

ibuprofen tablets and was not transported to the hospital for treatment for more than one hour. The Agency also discovered that the child had bottle rot, strep throat and fever blisters. Sister was comatose and was lifeflighted to Geisinger Medical Center for treatment. Mary Martin of the Agency files and indicates a report for medical neglect. Supervision of the family concluded on 3/21/1994.

5. On June 10, 1994, the Agency became involved with the family again determining that all 3 children were suffering from poor hygiene, their home was filthy and the children had no supervision. After circumstances improved, the case was closed on August 29, 1995. Laura Quick of the Agency testified that parents' goals were to properly supervise their children, schedule and attend both medical and dental appointments, childproof their house and maintain a clean and safe environment. Child is approximately 8 months old at this time.
6. On November 11, 1995 the Agency again became involved with the family, as there were reports of the family living in animal waste and children smelling of animal urine. After the residence at 605 Grace Street was cited for Codes violations, the family was under the protective services of the Agency to assure the living conditions were adequate. On January 24, 1996 Child was adjudicated dependent, however remained in the custody of her parents. Mother was not available to the Agency to inspect living conditions until April 9, 1996. The Agency was still concerned about the poor school attendance, home conditions as well as the hygiene of the children. Mary Martin testified

that after a number of home inspections and the participation of the family in voluntary services, the case was closed on January 30, 1998.

7. On October 13, 1998, the Agency received a referral due to Child's ongoing problem with poor hygiene and lice. Kay Carpenter, Supervisor of Special Services testified that Carole Turnbow would have supervised the family at this time. Home conditions and hygiene improved and the case was closed on December 9, 1999.
8. On December 15, 1999, the Agency received a report that Child was in school filthy, smelling of cat urine with non-serious bruises on her arm. Stephanie Ficcacci would have performed a home visit and closed the case on January 21, 2000.
9. Another report of Child's poor hygiene and lack of supervision was made to the Agency on April 7, 2000. Kristin Sweger of the Agency would have determined that both Child and sister were dirty and being dropped off at school one-half hour early, without supervision. At this time, Father was the primary caretaker, as Mother was working either second or third shift. During this time, both girls were attending Cochran Elementary School. Marguerite Wolfgang testified that both Child and sister were in the nurse's office for lice as well as having poor hygiene. When she would have contact with a parent it was always Father. Child had 14 days absent from school during kindergarten, 10 in first grade and 34 while enrolled in second grade (01-02 school years). The majority of these absences were exclusions for lice.

10. On August 21, 2001 Father came to the Agency offices and revealed that the family had been homeless since a fire in February 2001 and that he was the primary caregiver for the two girls. Charles Fisher of the Agency began working with Mother to obtain housing and work with outreach services to address concerns regarding supervision and hygiene. Services were provided to the family until the case was closed on October 31, 2001. Father again was most cooperative of the two parents.

11. The Agency became involved with the family again In January 2002 for the same hygiene and lice issues, which contributed to Child's poor attendance at Cochran Elementary School. During this time Mother and Father were separated. Kristen Sweger of the Agency, who worked with the family at that time, testified that Mother and the children were living with two maternal aunts in very poor living conditions. The girls were sleeping either on the floor or on a single bed. The apartment had no stove or refrigerator. Mother would not come in with the girls for lice rechecks. Betty Morehart, with outreach services, was sent to work with Mother who would not cooperate. At this time Father was homeless.

12. Due to the lack of progress of either of the parents to obtain appropriate housing, on March 8, 2002, Child was adjudicated dependant and began her placement in foster care. Child appeared to adjust well to foster care and was improving in school.

13. While with the Reunification unit, Dan Bower of the Agency began working with the family. Sister is initially placed into foster care, but after a home

study is completed goes to live with her biological father, T. A. Brother, who has been involved in the Juvenile system, is in placement due to his adjudication of delinquency. Mother does not complete classes but by January 2003 seems to be motivated to be reunited with Child. Father is living with his own father in Linden. During this period for Child in foster care, she is clean and lice free. She has academic, but no behavior problems at school.

14. While Brother is in placement, Mike Armbruster of the Lycoming County Juvenile Probation Office testified that Mother has no interest in his progress. Mother did not visit when Brother was living at Loysville. Gregory Kahn of Susquehanna House testified that while Brother was living there Mother may have visited a few times. All parties were hoping that Mother and son would be reunified, however Mother showed no interest in reunification.
15. Due to reports of Child's behavior being hyper along with academic difficulties, Dr. Richard Dowell, Clinical Neuropsychologist, was asked to evaluate Child on November 13, and 14, 2002. He found that Child suffers from Central Auditory Processing Disorder (CAPD) that causes her to have very significant academic language delays. As a genetically based disorder, in his experience, Dowell believes that it is a stable condition over time. Her foster parents as well as Nippenose Valley Elementary School are working with Child to help her improve her school performance which requires consistent parenting.

16. In January 2003, the case was transferred to Melissa Dangle of the Agency. Goals of the Mother were to obtain and maintain housing, attend parenting classes and cooperate with the Agency. Goals of the Father were to obtain mental health services, maintain housing and attend parenting classes. Both parents were visiting Child regularly, but appeared to be satisfied with the living situation.
17. On February 19, 2003 after a permanency hearing before Family Court Hearing Officer Jocelyn Hartley, Esquire, Child was continued in foster care. A pre-trial conference is held in November 2003, and trial date of December 2003 is set for the termination of Mother and Father's parental rights. By the time the termination hearing is held, Child will have been in foster care for 22 consecutive months.
18. Child is enrolled in an after school program for kids who need assistance with Tessa Grant while at Nippenose Elementary. She testified that after a slow start, Child had excellent attendance and worked well with children and staff. By the end of classes, Child not only socialized well with her peers but also passed all of her classes.
19. In September, 2003 Christina Lepley of the Agency began working with the family. Bruce Anderson, Psychologist, was requested to evaluate Mother on 10/16/2003 and July 8, 2004 and Father on July 12, 2004. Child is evaluated on August 18, 2004. Anderson testifies that Mother has an "avoidant and dependant" personality disorder, and appears to have become dependant on her unstable lifestyle. As she "meanders through life", it is unclear to him why

she has not taken control of her life, and believes that she is unlikely to change her ways. Father cares for both his biological child as well as his stepchildren; however it is unlikely that he would be able to assume responsibility for Child, as he cannot do so for himself. Child's bond with her biological parents is tenuous at best. Anderson believes that should parental rights be terminated, Child "will be sad, but will get through it and attach to her new family".

20. By the time of the November 2003 pretrial, the Agency was satisfied that the parents were making progress and recommended that the termination hearing be postponed. Mother is now engaged to M. P. and housing accommodations support overnight visitation with Child.

21. At the February 4, 2004 Permanency hearing before FCHO Hartley, Child is continued with the Agency in foster care. Testimony is presented that Mother would be granted more visitations once she completes the required classes, and becomes more involved with the medical and educational issues of Child. CASA worker Kathryn Ryan is appointed to work with Child and the family. Judy Hawkins testified that Mother began the required parenting classes in January 2004; however they were not completed until July 1, 2004.

22. In March 2004, Father is hospitalized for continued mental health problems and in April moves to Insinger's in South Williamsport. Father has a great deal of anxiety and determines that he cannot live on his own. Mental Health Resource Coordinator Steven Bechtel testifies that Father needs to live in a "supportive environment" to insure he takes his antianxiety and

antidepressant medication, as well as keep track of his appointments and schedule transportation for them. Child does visit father at Insinger's. During this time, Father cannot finish the required classes.

23. Mother does not attend parenting classes until July 2004. Mother's relationship with fiancé ends and she is forced, due to finances, to move to a smaller, one bedroom apartment. Because she has failed to timely attend court ordered classes, visitation is moved to the Sharwell Building, home of the Agency. In May of 2004, Mother is fired from her job at Manor Care. Mother does obtain employment at Delta in mid-July, however leaves that job after one week. Mother is now employed with Penn Real Estate working 4:45 PM to 10:15 PM, for approximately 21 hours per week. She states that it took her more than 2 years to "get back on her feet" but believes that she is more stable now to take care of her daughter. Although Mother believes that she realistically needs 6 months to 1 year more to be able to take custody of her daughter. Alan Lucchesi testifies that Mother is behind on her rent, but because she pays weekly, she will not be evicted.

24. When the case is reviewed on June 10th, 2004, the Agency's request to terminate parental rights is reinstated. After working with the Child and the family, CASA worker Ryan sees both parents as not equipped to handle the responsibility of raising children. Due to Father's mental health condition, he is not able to care for Child.

It is well settled that a trial court's decision regarding whether to grant a petition to terminate parental rights is governed by the statutory requirements of 23 Pa.C.S.A. §

2511. To satisfy Section 2511, the moving party must demonstrate by clear and convincing evidence that conduct existed, for at least six months prior to filing the petition, which reveals a settled intent to relinquish a parental claim to a child or a refusal or failure to perform parental duties. In re E.D.M., 550 Pa. 595, 708 A.2d 88 (1998). Once the evidence establishes a failure to perform parental duties or a settled purpose to relinquish parental rights, the court must engage in three lines of inquiry: (1) the parent's explanation for his or her conduct; (2) the post-abandonment contact between parent and child; and (3) the effect of termination of parental rights on the child pursuant to Section 2511(b). *Id.* at ___, 708 A.2d at 92 (citing In re: Adoption of Atencio, 539 Pa. 161, 650 A.2d 1064 (1994)).

§ 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 either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

23 Pa.C.S.A. § 2511(a)(1). The Court finds from the testimony that Mother has failed to perform her duties under the statute. Mother has made no efforts to show a continuing interest in the child and take a place of importance in her life. Since the Mother's reason for not taking a greater interest in her child's life is due to her "own problems" to which this Court finds she has no immediate plans to change, the Court does not believe the termination of the Mother's rights would have a detrimental effect on the child. Although there is a bond between Child and Mother, just as with Father, Mother's lack of consistent motivation to improve her situation appears to contribute very little to

Child's development and upbringing, or provide even a modicum of stability to Child's life. Mother believes that she needs about one more year to be able to get on her feet so she may be able to take care of her daughter. Based upon her track record, the Court has no confidence that mother will make any consistent effort to change her situation. "This court has repeatedly recognized that parental 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 Shives, 363 Pa. Super. 225, 231, 525 A.2d 801, 804(1987). The Court finds that Father genuinely loves his daughter and has consistently shown that he wants only what is best for her. However, with his own needs being so great this Court finds that Father would also be unable to care for Child.

The Court must also consider the needs and the welfare of the child as well.

Section 2511(b) of the Adoption Act clearly states:

(b) Other considerations. - The court in terminating the rights of a parent shall give primary consideration to the 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.

In In re Burns, 474 Pa. 615, 379 A.2d 535 (1977), the Supreme Court stated:

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'...Before a trial court may terminate the parental rights of a noncustodial parent, the court must consider

the non-custodial parent's explanation, if any, for the apparent neglect, including situations in which a custodial parent "has deliberately created obstacles and has by devious means erected barriers intended to impede free communication and regular association between the non-custodial parent and his or her child."

Shives, supra, 363 Pa. Super. at 225, 525 A.2d at 803 (Pa. Super. 1987). The Courts responsibility in a termination proceeding is always the best interest of the child.

One of the most valuable pieces of testimony was that of the Court Appointed Special Advocate, Kathryn Ryan. A professor of social psychology on sabbatical, Ms. Ryan has volunteered to assist both Child and as of June 2004, Brother. As part of her responsibilities, she has made contacts with all of the parties involved, and this Court believes made a recommendation as to what is in the best interest of the Child. Ms. Ryan concluded that Child has grown up without a lot of physical affection and so does not show any. Child needs stability, structure and continuity in her life. Ryan believes that the parents are not really equipped to do the kind of things that children need to survive, such as maintain a stable and clean home, regular schedule as well as be responsible to supervise those who cannot take care of themselves. Both Mother and Father are working so hard trying to survive; they are not capable of providing Child with what she needs. Ms. Ryan believes that to terminate parental rights would not have a traumatic effect as Child has become "a very adaptable kid."

Both Ms. Ryan and Mr. Anderson's in their testimony, believe that to afford Mother additional time would have a deleterious effect on Child's ability to adjust to a new home as well as interfere with the Child's opportunity to bond with a new family and adjust to her new surroundings. Therefore, the Court believes that the Agency has shown by clear and convincing evidence that Mother has shown a settled purpose of

relinquishing her claim as a parent and the Father is unable to assume care for Child despite his desire and best efforts. Accordingly, the best interests of the child are served by terminating the parental rights of both Mother and Father.

DECREE

AND NOW, this 29th day of September 2004, after hearing on the petition filed by the Department of Children and Youth for the involuntary termination of the parental rights of L. and M. H. to H.H., the Court GRANTS the petition. It is ORDERED AND DIRECTED that the rights of both L. and M. H. are terminated now and forever.

H.H. may be the subject of adoption proceedings without any further notice to L. or M. H..

Notice to the Natural Mother 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 that you choose to provide could be important to the child's present and future medical care needs. The law makes it possible for you to file current medical information and 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 the court to 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 to file medical history information by contacting the Adoption Medical History Registry. Members of the registry staff are available to answer your questions. Please contact the registry staff at:

Department of Public Welfare
Adoption Medical History Registry
Hillcrest, Second Floor, P.O. Box 2675
Harrisburg, PA 17105-2675
Telephone: 1-800-227-0225

Medical history information forms may also be obtained locally by contacting one of the following agencies:

County Children and Youth Social Service Agency
Any private licensed adoption agency
The Lycoming County Register and Recorder's Office

BY THE COURT,

Nancy L. Butts, Judge

Charles F. Greevy, III, Esquire
James Cleland, Esquire
James Protasio, Esquire
Donald F. Martino, Esquire
Gary Weber, Esquire
Law Clerk
Honorable Nancy L. Butts