

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: TERMINATION OF :
PARENTAL RIGHTS OF :
 : **No. 5923-2005**
T.M.T. AND : **ORPHANS COURT DIVISION**
THE ADOPTION OF D.L.T. :

OPINION AND ORDER

Before this Honorable Court, is S.L.T. (hereinafter “Petitioner Father”), father of D.L.T. (hereinafter “Child”) and T.L.T.’s (hereinafter “Petitioner Wife”), wife of Petitioner Father, Petition to Involuntarily Terminate the Parental Rights of T.M.T. (hereinafter “Respondent”), mother of the Child, and Adoption of the Child. The Petitioners’ allege that the Respondent has not fulfilled her parental obligations with regard to the Child since April 2004, and that it is in the Child’s best interest that the Court terminate her parental rights and permit the Petitioner Wife to adopt the Child. For the following reasons, the Court GRANTS the Petitioner’s Petition to Terminate the Parental Rights of the Respondent.

Background

The Child was born to the Petitioner Father and the Respondent on January 20, 1999. At the time, the parties were residing at the Petitioner Father’s current residence. In August 1999, the Petitioner Father and the Respondent were married and, later divorced in January 2001. Following the parties’ separation, the Petitioner Father continued to reside in the residence once shared by the parties; the Respondent moved several times between Lycoming and Bradford County, Pennsylvania. Until April 15, 2004, the parties shared custody of the Child; on that date, the Respondent delivered the Child to the Petitioner Father and severed all contact with the Petitioner Father and the Child.

From November 2004 through December 2004, the Respondent was in rehab following a Driving Under the Influence arrest. During this time, the Petitioner Father instituted custody proceedings in Bradford County. Bradford County awarded the Petitioner Father primary custody of the Child and, in December 2004, the Respondent began paying child support, via a wage attachment, to the Petitioner Father.

In July 2005, the Petitioners filed the instant Petition to Terminate Parental Rights and Permit the Adoption of the Child. After three continuances¹, a hearing on the matter was held on March 1, 2006.

At the March 1, 2006 hearing, the Petitioner Father testified, and the Respondent agreed that, since April 2004, she has not had any contact with the Child. The Petitioner Father further testified that, during that time, he resided at the same residence he once shared with the Respondent. The Respondent testified that she was aware of the Petitioner Father's address and phone number, but that she has made no effort to contact either the Petitioner Father or the Child. The Respondent further testified that, after April 2004, she experienced several deaths in her immediate family, removed herself from an abusive relationship, and struggled with unspecified mental and emotional problems but that she is currently attempting to "get her life back together."

¹ The Petitioners requested two continuances after having difficulty locating and serving the Respondent. The Respondent requested the third continuance after arriving to Court late and requesting an attorney.

Discussion

The Adoption Act provides that, the Court may terminate the rights of a parent, in regard to a child, when the petitioner establishes, by clear and convincing evidence, that, “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.” 23 Pa.C.S.A. § 2101, *et seq.*; *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) and *In re J.E. and E.E., minors: Appeal of R.E. and R.E.*, 2000 PA Super 20, 745 A.2d 1250 (2000); and 23 Pa.C.S.A. § 2511(a)(1).

In order to establish a “settled purpose of relinquishing one’s parental claim to a child,” the petitioner must prove that, the respondent deliberately, for at least six continuous months prior to the filing of the petition to terminate parental rights, persisted in severing his/her relationship with the child, *In re Involuntary Termination of Parental Rights and Adoption of Baby Girl Fleming, a minor: Appeal of Frank J. Yelinko and Elizabeth J. Yelinko*, 471 Pa. 73; 369 A.2d 1200 (1977); i.e. the petitioner must show “an affirmative indication of positive intent coupled with finality of purpose,” *In re Adoption of R.W.B.*, 485 Pa. at 174, 401 A.2d at 350 (1979) citing *In re Adoption of McAhren, et al: Appeal of McAhren*, 460 Pa. 63, 331 A.2d 419 (1975) and *Wolfe Adoption Case*, 454 Pa. 550, 312 A.2d 793 (1973).

A parent fails or refuses to perform his/her parental duties when he/she neglects to maintain an important role in the child’s life. *In re Adoption of Orwick, a minor: Appeal of Orwick*, 464 Pa. 549; 347 A.2d 677 (1975). Although what constitutes sufficient satisfaction of parental duties must be considered in light of the existing circumstance, all parents share some basic responsibilities. *In re Adoption of David C.: Appeal of Gertrude U.*, 479 Pa. 1, 387 A.2d 804 (1978). These responsibilities encompass more than financial support; they require

continuing interest in the child and a genuine effort to maintain communication and association with the child. *In re Adoption of David C.*, 479 Pa. at 8, 387 A.2d at 807 (1978) citing *In re Adoption of McCray: Appeal of McCray*, 460 Pa. 210; 331 A.2d 652 (1975); see *In re Burns*, 474 Pa. 615, 379 A.2d 535 (1977) (court upheld the decision to terminate a mother's parental rights after said mother expressed dissatisfaction with the placement of her children foster care, but failed, for ten months, to contact the agency or her children); *In re Diaz: Appeal of Yvonne Laventure*, 447 Pa. Super. 327; 669 A.2d 372 (1995) (court upheld the decision to terminate a mother's parental rights after she only visited the child four times in six years); and *In re Adoption of L.D.S., a minor: Appeal of L.A.S., natural mother*, 445 Pa. Super. 393; 665 A.2d 840 (1995) (held that, the mother's two phone calls to her child in over six months were not sufficient to support contention that a mother had not failed her parental duties).

The court should consider the "totality of the circumstances" when assessing the petitioner's proffered evidence under the statute, *In re Adoption of B.D.S.*, 494 Pa. 171; 431 A.2d 203 (1981) citing *In re Adoption of R.W.B.: Appeal of C.W.*, 485 Pa. 168; 401 A.2d 347 (1979), but, above all else, the court must give primary consideration to welfare and the needs, both tangible and intangible, of the child, *In re J.I.R.*, 2002 PA Super. 295, 808 A.2d 934, 937 (2002) and *In re the Involuntary Termination of Parental Rights of Matsock: Appeal of Matsock*, 416 Pa. Super 520, 611 A.2d 737 (1992). "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.: Appeal of C.S. Sr.*, 2000 PA Super 318, P18; 761 A.2d 1197, 1202 (2000) citing *In re P.A.B., M.E.B., M.A.B.: Appeal of G.B. and P.B.* 391 Pa. Super. 79, 570 A.2d 522 (1990).

After the petitioner establishes the statutory elements by clear and convincing evidence, the court must engage in three lines of inquiry: (1) the parent's explanation for this/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)² of the Adoption Act. *In re C.M.S., a minor*, 2003 PA Super 292, P24; 832 A.2d 457, 464 (2003) citing *In re E.D.M.*, 550 Pa. 595, 708 A.2d 88 (1998).

Here, the Petitioners have established the statutory elements under Section 2511(a)(1) of the Adoption Act. It is clear that the Respondent deliberately severed contact with the Child for at least six continuous months prior to filing of the Petitioner's Petition; she knew where the Child was and knew how to reach him, but failed to make contact for over one year. It is also clear that the Respondent failed and/or refused to perform her parental duties for at least six continuous months prior to the filing of the Petitioner's Petition. Although the Respondent paid child support during her absence, she failed to communicate with the Child in any way.

At the March 1, 2006 hearing on this matter, the Respondent testified that, due to her family, a month long stay in rehab, an abusive boyfriend, and struggles with emotional problems inhibited her ability to perform her parental duties; however, the Supreme Court of Pennsylvania has held that, a period of asserted hardship does not entirely relieve one of his/her parental responsibilities. *In re Adoption of M.T.T.: Appeal of Father*, 467 Pa. 88; 354 A.2d 564 (1976) (the Court reversed the termination of an imprisoned father's parental rights because, after his child was placed in a different foster home, he used all available resources to locate and maintain

² "The court, in terminating the rights of the 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) . . . , 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." 23 Pa.C.S.A. § 2511(b).

contact with his child). The Respondent further testified that she lacked adequate transportation to visit the child. The statute does not require face-to-face interaction between parent and child; instead, it requires mere attempts to maintain contact of any kind which, the Respondent failed to do.

Finally, the Court does not believe that terminating the Respondent's parental rights will have a detrimental effect on the Child. Although the Respondent has been financially supporting the Child through a wage attachment since December 2004, she has made no effort to show a continuing interest in the Child, nor has she attempted to establish a place of importance in the Child's life. For over one year, the Child has resided with and been raised by the Petitioners. During this time, the Respondent has failed to contact the Petitioners and the Child because, as she testified, she had personal problems; the Court refuses to accept that, the Respondent's personal problems excuse her from exercising her parental duties.

ORDER

AND NOW, this _____ day of March 2006, the Petition to Involuntarily Terminate the Parental Rights of T.M.T. is hereby GRANTED. It is ORDERED and DIRECTED that the parental rights of Ms. T., with regards to D.L.T., are TERMINATED now and forever.

The Child may be the subject of adoption proceedings without any further notice to the Respondent.

By the Court,

Nancy L. Butts, Judge

cc: Charles R. Rosamilia, Esq., c/o Rosamilia & Brungard, 241 W. Main Street, Lock Haven,
PA 17745
T.M.T.
Judges
Honorable Nancy L. Butts
Laura R. Burd, Law Clerk
Gary L. Weber, Esq.

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