

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF

**A.H.
A MINOR CHILD**

:
:
:
:
:
:
:

**No. 5793
ORPHANS COURT DIVISION**

OPINION AND ORDER

Before this Honorable Court, is Lycoming Children and Youth Services' (Petitioner) Petition for Involuntary Termination of Parental Rights of W.H. and S.H. (Respondents), mother and father of A.H. (Child). The Petitioners' allege that Child suffered a non-accidental injury while in the care and custody of Respondents, and therefore, it is in the Child's best interest that the Court terminates Respondents' parental rights.

Child was born on October 7, 2006. Respondents were married at the time of Child's birth. Respondents had custody of Child until January 25, 2007. On the morning of January 25, 2007, Children & Youth case worker Melissa Young¹, made a home visit, she noted that at that time, Child was alert and did not appear to be in distress. Later that same day, Robin Fink, a Social Services worker from the Williamsport Hospital called Petitioners. Robin Fink reported that Child had been brought into the Emergency Room by ambulance and was unresponsive. At the hospital, Child was seen by Dr. Martin, who had a CAT scan performed. The CAT scan showed bleeding on the brain in two different colors – one white, one gray. Dr. Martin opined that the bleeding on the brain occurred at two different times, one that day and another at an earlier time. Dr. Martin also noted that the Child had bruising and swelling around the entire left

¹ Melissa Young has worked with the family since 2005; however, the Agency has been working with the parents since 1999 when Erin Duffield was born.

arm. Based on the subdural bleeding, retinal hemorrhaging and bruising, Dr. Martin concluded that Child's injuries were non-accidental in nature, and believed the injuries were caused by a back and forth motion, such as shaking. Dr. Martin then had the Child Life Flighted to the Hershey Medical Center where he was ultimately seen by the Director of Pediatric Neurosurgical Care, Dr. Mark Diaz. Dr. Diaz also had a CAT Scan of Child's brain performed. The scan revealed bleeding around the outside of the brain and retinal hemorrhages of both eyes. Additionally, Dr. Diaz noted bruising on Child's left arm, and that he had suffered from seizures for four days. Dr. Diaz also concluded that the injury was non-accidental in nature.

The Honorable William S. Kieser granted Petitioner's Emergency Custody Petition on January 26, 2007. Upon discharge from the Hershey Medical Center on February 1, 2007, Child was placed with Russell and Diane Brought, Child's paternal aunt and uncle and has remained there since. A dependency hearing was held before the Honorable Kenneth D. Brown on March 15, 2007. Judge Brown found in his March 19, 2007 Opinion that aggravating circumstances existed, as Respondents' parental rights to their three older children have been involuntarily terminated.² Further, Judge Brown found that no reasonable efforts of reunification needed to be made, and thus, discontinued visitation between Respondents and Child.

On September 21, 2007, Petitioner's filed the instant Petition for Involuntary Termination of Parental Rights. Petitioner alleges in its Petition that Respondents' parental rights should be terminated because of the non-accidental injury sustained by Child and the Involuntary Termination of Respondents' three other children.

² The Honorable Richard A. Gray terminated Respondents' rights to Erin Duffield on February 15, 2005, and Erin has since been adopted. Respondents' rights to their children, Erik Hurst and Joshua Hurst, were also terminated by Judge Gray on February 6, 2007. The Pennsylvania Superior Court affirmed the Involuntary Terminations of Erik and Joshua on October 11, 2007. Respondent Mother petitioned the Pennsylvania Supreme Court for allocatur on November 9, 2007.

This Court held a hearing on Petitioner's Petition for Involuntary Termination of Parental Rights on December 10, 2007. The Respondents failed to attend such hearing, although both had received notice of the hearing. The Court took testimony from Child's case worker, Melissa Young and Pediatric Neurosurgeon, Dr. Diaz. Ms. Young testified that she made home visits once a week following Child's birth. She stated that she visited the home on January 25, 2007, a few hours prior to the incident. Ms. Young testified further that currently Child is making progress, but is about two months behind. Child attends physical therapy on a weekly basis and no longer takes medication. Ms. Young also stated that the Respondents have not had contact with Child. Moreover, Ms. Young testified that she spoke with Respondent Mother on November 28, 2007, who told Ms. Young that she is continuing to see Julie Bakley from Family Life Services and working on her stress management issues. Moreover, Ms. Young said she feels that while Respondents have attended several parenting, stress management, and anger management classes, they are unable to apply what they learn in said classes.

In his testimony at the hearing, Dr. Diaz reaffirmed his conclusion that Child's injuries were non-accidental in nature. Dr. Diaz testified further that subdural and retinol injuries are common with non-accidental injuries. Additionally, in his evaluation of Child, he found no areas of impact. Moreover, Dr. Diaz testified that no history of accidental injury was provided.

23 Pa.C.S.A. § 2511(a) provides that the rights of a parent in regards to a child may be terminated by any of the following:

- (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.

- (5) 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.

In order to involuntarily terminate parental rights, the party seeking termination must prove by clear and convincing evidence the grounds for termination. Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); In re Adoption of J.D.P., 471 A.2d 894, 895, (Pa. Super. Ct. 1984). According to the Pennsylvania Supreme Court:

[o]nce the evidence establishes a failure to perform parental duties or a settled purpose of relinquishing 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) consideration of the effect of termination of parental rights on the child pursuant to Section 2511(b).

In re Adoption of Charles E.D.M., 708 A.2d 88, 92 (Pa. 1998). In an involuntary termination proceeding, the focus is on the conduct of the parents. In re B.L.W., 843 A.2d 380, 383 (Pa. Super. Ct. 2004). Most importantly, “however, is that adequate consideration be given to the needs and welfare of the child.” In re I.A.C., 897 A.2d 1200, 1204 (Pa. Super. Ct. 2006) (citing In re J.I.R., 808 A.2d 934, 937 (Pa. Super. Ct. 2002), appeal denied, 821 A.2d 587 (2003). “In evaluating the needs and welfare of the child, the trial court must consider ‘whatever bonds may exist between the children and the [parent], as well as the emotional effect that termination will

have upon the children.’’ In re I.A.C., 897 A.2d 1200, 1204 (Pa. Super. Ct. 2006) (quoting In re Adoption of A.C.H., 803 A.2d 224, 229 (Pa. Super. Ct. 2002)).

The Court finds from the testimony that Respondents have failed to perform their duties under the statute. Respondents have a history of inability or refusal to properly care for their children. Respondents’ parental rights to their three older children have been involuntarily terminated. Now Respondents inability or refusal to properly care for their children has escalated to the point of physical abuse. It is clear from the testimony that Child’s injuries were non-accidental in nature, and Respondents have not provided an explanation. Additionally, Respondents were uncooperative in assisting Petitioner’s and Law Enforcement Officials with the investigation in determining the cause of Child’s injuries. Further, from the testimony of Melissa Young, it appears that the parenting, stress management, and anger management classes Respondents took, have been to no avail. Moreover, Respondents failed to appear at the Involuntary Termination hearing.

The Court is satisfied that termination of Respondents’ parental rights will be in the best interest of the child. As Child has done well with the Broughts, and the Respondents have not had contact with the Child since March of 2007, there is no indication that termination of Respondent’s parental rights will have any detrimental emotional effects on Child.

ORDER

AND NOW, this _____ day of December 2007, the petition for involuntary termination of parental rights is hereby GRANTED. It is ORDERED and DIRECTED that the parental rights of W.H. and S.H. with regard to A.H. are hereby terminated now and forever.

A.H. may be the subject of adoption proceedings without any further notice to W.H. and S.H..

Notice to the 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 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

xc: Charles F. Greevy, III, Esq.
John Gummo, Esq.
Robin Buzas, Esq.
Eric Linhardt, Esq.
Children & Youth
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary Weber, Esq. (LLA)