

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF

**I.M.
A MINOR CHILD**

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**No. JV-157,2006
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 B.R. (Mother) and I.M. (Respondent), mother and father of I.M. (Child). The Petitioners' allege that Mother and Respondent have not fulfilled their parental obligations with regard to the Child since the birth, and that it is in the Child's best interest that the Court terminates their parental rights. On November 5, 2007, Respondent Mother voluntarily relinquished her rights to the Child.

Child was born prematurely on March 19, 2006 at the Geisinger Medical Center. Mother and Respondent were not married at the time of the birth of Child. Mother had custody of Child until May 2, 2006, when Petitioner was granted Emergency Custody of Child. Respondent was incarcerated at the Lycoming County Prison when Child was born. Respondent continues to be incarcerated at SCI Forest, on a sentence of 27 months to 5 years for Delivery of a Controlled Substance. The Child was placed with the maternal grandparents, Sheila and Julius Poston on December 21, 2006, and has remained there since.

On June 4, 2007, Petitioner's filed the instant Petition for Involuntary Termination of Parental Rights. Petitioner alleges in its Petition that Respondent "has shown no parental

interest, concern for, and has had no contact with the child since her birth.” After a continuance¹, a hearing on the matter was held on December 10, 2007.

At the December 10, 2007 hearing, the Petitioner testified that he has never seen Child or had contact with her. Respondent has only ever seen the child through pictures that the Child’s mother sent to him. Respondent has on one occasion sent a small handmade scarf and a card for the Child’s birthday. Respondent has never asked Petitioner for a phone number of the Child’s maternal grandparents or requested a visit at the prison. Respondent alleges that the Child’s mother kept him apprised of the Child’s progress. Further, Respondent has not financially provided for Child.

Respondent is currently incarcerated and eligible for parole in April 2008. Upon release from prison, Respondent will be placed in a Halfway House/Community Correction Facility. Respondent then intends to either live with his mother or find a place of his own, secure employment pursuant to his conditions of parole, and care for Child. Respondent has no problem with the Postons caring for Child, but does not want his parental rights terminated.

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.

¹ The Honorable William S. Kieser ordered a continuance because Respondent was not transported to the Lycoming County Courthouse from SCI Forest.

- (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.
- (8) 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.

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 Pennsylvania Superior Court has held that “incarceration alone does not provide sufficient grounds for the termination of parental rights.” In re K.J., 2007 PA Super 337, P13 (citing In the Interest of C.S., 761 A.2d 1197 (Pa. Super. Ct. 2000)). However, “a parent’s incarceration does not preclude termination of parental rights if the incarcerated parent fails to utilize given resources and to take affirmative steps to support a parent-child relationship.” In re K.J., 2007 PA Super 337, P13 (citing In re D.J.S., 737 A.2d 283 (Pa. Super. Ct. 1999)). Further, “[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 physical and emotional needs.” In re K.J., 2007 PA Super 337, P13 (2007) (quoting In re B., N.M., 856 A.2d 847, 855 (Pa. Super. Ct. 2004), appeal denied, 582 Pa. 718, 872 A.2d 1200 (2005)).

The Court finds from the testimony that Respondent has failed to perform his duties under the statute. It is clear from the testimony that Respondent has had no contact with Child since birth. Respondent’s explanation is that he is in prison and has maintained contact with Child’s Mother. However, Respondent’s contact with Child’s Mother is not sufficient. Petitioner provided Respondent with information regarding Child’s placement and contact information, but Respondent failed to ever communicate with Child. As such Respondent was provided with the necessary information to form a parent-child relationship, but failed to use the resources provided to him to form such relationship. Additionally, Respondent’s rights should not be preserved until a more convenient time for Respondent, while the Postons are providing for the Child’s physical and emotional needs.

The Court is satisfied that Respondent took no steps toward performing parental duties since the birth of Child. Further, the Court is satisfied that termination of Respondent's parental rights will be in the best interest of the child. As Child has done well with the Postons, and no bond exists between Child and Respondent, 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 I.M. with regard to I.M. are hereby terminated now and forever.

I.M. may be the subject of adoption proceedings without any further notice to I.M.

Notice to the Natural Father

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

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