

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE :
 :
T.C., : **No. 6080**
S.C., : **ORPHANS COURT DIVISION**
H.C., :
MINOR CHILDREN :

OPINION AND ORDER

Before this Honorable Court, is Lycoming Children and Youth Services' (Petitioner) Petition for Involuntary Termination of Parental Rights of R.C. (Respondent), father of T.C., S.C., and H.C. The Petitioners allege that since the children have been in a resource home continuously for over sixteen months with no reasonable prospect for the children to return, it is in their best interest that the Court terminates Respondents' parental rights. The children's mother, A.B. (Mother) voluntarily relinquished her rights on June 23, 2008 and it was confirmed at a hearing on September 23, 2008.

Background

T.C. was born on February 6, 1999, S.C. on December 21, 2000, and H.C. on February 16, 2004. All three children are of the Native American race as Respondent is a member of a federally recognized tribe known as the Lac-Courte-Oreilles Band of Lake Superior Chippewa Indians. Respondent was not married at the time of each of the children's birth.

On February 13, 2006, a dependency hearing was held before Family Court Hearing Officer, Jocelyn B. Hartley, Esq. At that time, the children were declared dependent with placement in their parents' home. A review hearing was held on August 28, 2006 before the

Honorable Richard A. Gray, who reaffirmed dependency and continued placement in the Respondent's home. On November 8, 2006, the police were called to the home and reported that Respondent and his paramour, Amanda Foster were heavily intoxicated. The police were called again on November 16, 2006; the police report indicated Respondent was heavily intoxicated and was charged with simple assault, making terroristic threats, and harassment.¹ On December 11, 2006 and December 20, 2006, a review hearing was held before the Honorable Kenneth D. Brown, who reaffirmed dependency and ordered the children be placed in an approved foster home. On December 20, 2006, Petitioner's placed the children with Greg and Lena M. (M.).²

On May 14, 2007, a review hearing was held before this Court, which reaffirmed dependency and ordered all the children to remain in the resource home together. A review hearing was held before the Honorable Dudley N. Anderson on November 1, 2007, who found the children should continue in placement in the resource home and Respondent was directed to attend drug and alcohol counseling. On February 8, 2008, the police were called to Respondent's home because Mother had slashed Respondent's face. When Corporal Ottaviano of the South Williamsport Police Department arrived, he found Respondent to be highly intoxicated and refusing treatment. A review hearing was held on March 11, 2008 before the Honorable William S. Kieser, in which he revoked the order for unsupervised visitation in light of the February 2, 2008 incident.

On April 24, 2008, 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 the children have been in a resource home for approximately sixteen

¹ Respondent was incarcerated for DUI and these new charges; he was released on May 2, 2007.

² Petitioner reports they have been involved with the C. family since 2003. However, there has only been one prior placement to the current placement; H.C. was voluntarily placed for five days in September of 2005.

consecutive months and because of Respondent's continued alcohol problems. On June 17, 2008 a pretrial conference was held before Judge Gray, at which the Termination of Parental Rights Hearing was scheduled. On July 29, 2008, Judge Kieser reaffirmed dependency, found the children should remain in the resource home and that visitation with Respondent should remain supervised at the Sharwell Building.

This Court held a hearing on Petitioner's Petition for Involuntary Termination of Parental Rights on September 23, 2008 and September 25, 2008. Joseph Grafius, with the in-home services unit of the Children and Youth Agency (Agency) testified he worked with the family as a caseworker from November 2005 until December 2006, when the case was transferred to the permanency unit. He related he placed the children in resource homes in December of 2006 because of Respondent's alcohol abuse, instability in the home, such as conflicts between Respondent and the Mother and/or other paramours, and Respondent's inability to maintain proper housing. Grafius reported that Respondent was arrested for DUI on June 9, 2006 and that at the time of the arrest, the children were in the vehicle with him and neither was in car seats nor wearing seatbelts. Grafius related that at the time of placement, all the children had emotional issues and were not up to par in school and H.C. had severe developmental delays. Finally, he related that when he went to pick the children up a few weeks ago after not seeing them for almost two years, the children had changed; they were happy, secure, and had good attitudes.

LuAnn Kolumbus, the director of Indian Child Welfare for the Lac-Courte-Oreilles Band of Lake Superior Chippewa Indians testified that she investigates all cases of child abuse and neglect for children who reside on reservations. She testified that she has a Bachelor's degree and a Master's degree in Social Work. Kolumbus also related she has worked with Indian

children for twenty-five years. She further related she was born and raised on the reservation in Wisconsin.

Kolumbus reported being advised of the status of this case by caseworker Denise King. She felt the Agency had done a good job of providing active efforts to keep the family together. Specifically, she testified Ms. King did a search to find close relatives and foster homes to take the children in, but there were no relatives available and all foster homes on the reservation are full; they cannot be placed in a Native American home right now. She related the current placement of the children with the M.s is appropriate for the children. She testified the amount of time the children have been in the resource home is important due to the children's need for permanency.

Kolumbus related Indian Child Welfare's belief is that children should be raised in an alcohol and drug free home, so when they find children are in homes that are not alcohol and drug free, they should be removed. She testified that until February of 2008, there was domestic violence in the Respondent's home along with alcohol use in excessive amounts. She related that if Respondent was truly adamant about getting sober that is something to be considered, but if the sobriety had only been for a short length of time, that is a factor as well. Kolumbus further testified that she relies heavily on the Tribe caseworker's recommendation along with that of the Agency. She reiterated that the most important thing is the best interest of the children. In this case, she believed, it is not in the best interest of the children to be returned to Respondent and therefore, his rights should be terminated.

Dixie Haldeman testified she was the caseworker for the children from January 2007 until July 2008. She testified that when she went to the Respondent's home during a scheduled visit on January 14, 2008, she found an empty six pack of beer in the kitchen. She also testified

as to the February 8, 2008 incident and that Respondent did not admit to drinking that night until the April hearing before Judge Kieser.

Haldeman testified there has been a dramatic change in the children since placement with the M.s. She explained that T.C. used to have poor eye contact and took on a fathering role over the other children, but now he has better self-esteem, good eye contact, does well in school, and plays Pop Warner football. S.C. also used to have poor eye contact, was whiny and demanding, but since placement is a happy child, has good eye contact, takes pride in herself, does well in school, and is a Pop Warner cheerleader. Haldeman related that H.C. has changed the most. He used to throw temper tantrums, played in his feces, hit people, and had very little speech. Although H.C. is still somewhat delayed, his speech is much better, making it easier to have a conversation with him.

Haldeman related that Respondent was requested and expected to attend the children's medical appointments. From November 2007 until July 2008, there were eight possible medical appointments and Respondent only attended three. She did testify that Respondent has attended every weekly visit with his children at the Sharwell Building; Haldeman is present during the visits. She described that Respondent is not very active with the children and that T.C., Respondent's sixteen year old daughter has been attending the visits recently and has noticed she seems to be the one taking care of the children. Heather Wood, a visitation coordinator also testified there is little interaction between Respondent and the children. Haldeman related that H.C. is not potty trained and that it has been suggested to the Respondent that he should take H.C. immediately to the bathroom when visits begin. Respondent fails to do so, H.C. ends up soiling himself, which causes Respondent to become agitated.

Haldeman related the children are initially glad to see Respondent, but after a few minutes all three would rather come out and see her and Wood instead of spending time with Respondent. She also testified that when Foster Mother comes to pick up the kids they are happy to see her and there are no tears or asking when they will see Respondent again. Wood also related there are no separation problems when Foster Mother comes to take the children home. Haldeman related the children are very happy in the M.'s home, very affectionate with the M.s and the M.s are willing to adopt the children. She testified that while Respondent has been sober for seven months, that is a relatively short amount of time, and she explained that for a portion of that time Respondent was on a SCRAM unit.³ She relates further that if Respondent's rights are not terminated at this time, the next step would be to add another night of visitation at the Sharwell building. Ultimately, it would take a year or more until the children would be allowed extended visits in Respondent's home. Finally, Haldeman related she believes it is in the best interest of the children for them to remain with the M.s and for Respondent's rights to be terminated.

Judy Brague Deacon, the CASA volunteer who worked with the family also testified that in her opinion the children should remain with the M.s and Respondent's rights should be terminated. Deacon related there has been a huge change in the children and they are very happy with the M.s. She also noticed the children speak of Respondent less and less and their behavior regresses after visits with him.

Bruce Anderson, a licensed psychologist testified that he has counseled individuals with drug and alcohol problems. Anderson related he performed a psychological evaluation of the Respondent in February of 2006. He found Respondent to be emotionally stable, but also to

³ Secure continuous Remote Alcohol Monitor.

abuse alcohol. Anderson related Respondent admitted to abusing alcohol his entire adult life and to having three DUI's in about eight years. He related he interviewed each child individually on September 12, 2008. Anderson reported that S.C. likes being with the M.s, likes visits with Respondent, but ultimately wants to live with the M.s permanently. He related that T.C. likes being at the M.'s and wants to remain there. Anderson also testified that he cannot carry on a conversation with H.C. to determine his wishes for the future. Finally, Anderson related that removal of the children from the M.'s home would cause serious emotional damage to the children.

Lena M., current Foster Mother, testified the children were placed with her and her husband on December 20, 2006. She described the children then: H.C. was nonverbal and threw temper tantrums, S.C. was angry and would tear her room apart, and T.C. was the "daddy" for the group. She testified that now all three children are doing well in school. Mrs. M. also confirmed that the children do not talk about the visits with Respondent and usually regress some following those visits.

Michael Barr, Respondent's employer testified on behalf of Respondent. Barr testified that he noticed symptoms of alcoholism in the five or six years he has known Respondent until about one year ago. Since Respondent has been sober, Barr described that the conversations he has with others have changed, he never misses work, has better performance, is more responsible with money, has a nicer house, and helps other people on the crew with their problems. Barr testified Respondent appears to now avoid people who are problems for him, attends regular Alcoholics Anonymous (AA) meetings, and has for the first time taken sobriety seriously.

Respondent's oldest daughter, T.C. testified she lived with her dad for the first two years of her life, then moved to Wisconsin where she lived on the Indian reservation with her mother.

She related she would visit Respondent every summer, sometimes at Christmas, and lived here during her sixth and seventh grade years. T.C. testified she likes living with Respondent because it is a stable environment now that he has changed; her dad is sober, and no longer associates with the same people who got him into trouble. She related that she came here in June or July and has not seen her father drink once. She also testified he attends AA meetings and counseling. T.C. explained she decided to stay because her father can provide her a stable environment and provide her with the things she needs and wants. She related that her mother does not provide a stable home environment and does not have money to buy her the things she needs. T.C. related that a friend from Respondent's work, Justin is staying with them for a short period of time. T.C. also related she feels the children have a good time with Respondent and appear to be upset when they have to leave.

Jennifer Bower testified that as of July 17, 2007 she has been the caseworker working with this family. She related that she has been to Respondent's house on two occasions and has found it to be clean. She further related that there have been no incidents of alcohol abuse, no police contact, and Respondent has always been cooperative during the home visits since she has been assigned the case. Bower testified that a male named Justin has been living with Respondent for a few months and in August of this year, the Respondent's sister-in-law and her two children were living there.

Scott Metzger, Respondent's Probation Officer testified he has supervised Respondent for over a year. He related Respondent has been tested for alcohol use regularly since February and there have been no positive tests. He also explained the Respondent was on a SCRAM bracelet from the end of April until the end of July and had no violations during that time. Metzger related Respondent has completed a 90/90, attends meetings on a regular basis, works

with a sponsor, and attends counseling. Metzger believes Respondent is serious about remaining sober, but will struggle with alcohol his entire life.

James Bodnar testified he has been Respondent's sponsor for over seven months. Bodnar related that Respondent attends meetings, calls if he has any problems, and is following the twelve step program. He feels Respondent is a different person now and is the doing the work that is required to get his life on track. In addition, Bodnar related that working the twelve steps usually takes one to one and a half years to complete.

Angela Dunlap, Clinical Supervisor and Counselor at Crossroads Counseling testified she has been Respondent's Counselor since December of 2007. She related Respondent has been consistently attending individual counseling once a week and also attends group counseling once a week. She testified Respondent is very cooperative, talkative and enjoys recovery. Dunlap believes Respondent has made a good deal of progress and that he stands a chance of maintaining his sobriety.

Respondent testified he is thirty-nine years old and has been an alcoholic for approximately twenty-five years. He did describe a period sobriety from 1990-1992 while he was in college on the reservation. Respondent also testified his father died of alcoholism, one of his brothers is at the Pre-Release Center, another is going to AA meetings, and another brother quit drinking twelve years ago. He related that on February 8, 2008 after A.B. stabbed him he went to his brother's house and had two drinks. He related he did not at first admit to drinking that night because he was afraid he would lose his kids and go to jail. Respondent testified he started attending meetings on February 9, 2008 and obtained a sponsor because he knew he needed help to stay sober. He relates he has no desire to ever drink again and has a daughter at home who

needs a sober dad. Respondent testified he has never been as serious about sobriety as he is now and he now has the tools to remain sober.

Respondent related he always thought his visits with the children went well, but that it is very hectic at the Sharwell Building, and they can only do the same things all the time. He feels he is able to care for the children and is prepared to take the children home right now. He knows it would hurt the children not to see the M.s and therefore, he would allow them to maintain a relationship with the children. He stated it is hard to see a change in his children because he does not see them often enough. He admits that H.C. talks now, S.C.'s speech is better, and the kids generally appear to be happy.

Guardian Ad Litem, Matthew F. Golden, Esquire testified he has been involved in the case since January of 2008. He related that he met with the children on Tuesday September 23, 2008 at the M.'s home. He explained to the children the Court proceedings and both T.C. and S.C. told him they want to live with the M.s forever, which is what they have consistently relayed. The children did state they would be a little bit sad if Respondent's rights were terminated. Golden testified that in his opinion the best interest of the children requires Respondent's rights be terminated. He feels the children should not have to wait any longer for permanency in their lives. He also feels the M.s and the children have become a happy, stable family.

Discussion

The Respondent and the children are of the Native American race; therefore, as previously decided by Judge Kieser on March 14, 2008, the Indian Child Welfare Act of 1978 (ICWA) governs. According to the relevant portions of that act,

(d) . . . Any party seeking to effect a . . . termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. . . .

(f) . . . No termination of parental rights may be ordered in such proceeding in the absence of a determination, **supported by evidence beyond a reasonable doubt**, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

25 U.S.C. § 1901 (emphasis added). Under Pennsylvania law, the termination must be in the best interests of the child. In re Adoption of Charles E.D.M., 708 A.2d 88, 93 (Pa. 1998).

As none of the cases in Pennsylvania applying ICWA are directly on point, the Court finds cases from the Supreme Court of South Dakota persuasive. In the Interest of D.M., both mother and father had alcohol related problems. 661 N.W.2d 768 (S.D. 2003).

The Department of Social Services worked with the parents for nineteen months in an attempt to work toward reunification of the family, but ultimately was unsuccessful. The Court found beyond a reasonable doubt that serious emotional or physical harm to the children would result from continued custody with the parents. The Supreme Court considered, among other things, the father's chronic history of alcoholism and that "rehabilitation would be a long-term effort with significant probability that it would not be successful." Id. at 774. See also, In the Interest of D.G., 679 N.W. 2d 497, 502 (S.D. 2004) (determining child could not wait for his father to address his parenting issues and alcoholism.).

This Court finds the evidence does show beyond a reasonable doubt that to return the children to Respondent is likely to result in serious emotional or physical damage to the children. While Respondent has made great strides in the last seven months to remain sober, he admits to being an alcoholic for over twenty-five years. The Court finds that seven months is a relatively

short period of time to be sober, the possibility of relapse is great, and that the Children should not have to wait any longer for permanency due to Respondent's alcohol issues. The Respondent has not been honest about his alcohol usage while on supervision in an attempt to avoid jail and out of the fear of losing his kids. The Court also notes the Respondent was on a SCRAM unit during the majority of his time of sobriety. Further, Respondent has made poor choices in relationships which have resulted in domestic violence issues. Respondent seems to be a good father to his older daughter; however, she admits one of the reasons she is staying with her father is that her mother cannot always buy her the things she needs and Respondent is able to do so.

The Court finds the children do not appear to have any real emotional connection with Respondent. The testimony of several witnesses show the children have flourished in their new environment. The Court feels that removal of the children from the M.'s home after nearly twenty-two months would cause even more trauma to the children. Therefore, the Court finds the Petitioner has met its burden as determined by the ICWA. As such, the Court is satisfied that termination of Respondent's parental rights will be in the best interests of the children.

ORDER

AND NOW, this _____ day of October 2008, the petition for involuntary termination of parental rights is hereby GRANTED. It is ORDERED and DIRECTED that the parental rights of R.C. with regards to H.C., T.C., and S.C. are hereby terminated now and forever.

H.C., T.C., and S.C. may be the subject of adoption proceedings without any further notice to R.C.

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.
Robin Buzas, Esq.
Matthew F. Golden, Esq.
James Protasio, Esq.
Children & Youth
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary Weber, Esq. (LLA)