

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE ADOPTION OF: : NO. 6079
:
AM : ADOPTION

OPINION

Before the Court is a Petition for Involuntary Termination of Parental Rights filed by the Mother of AM, LS, on February 28, 2008. Mrs. S seeks to terminate the parental rights of A's biological father, JM, as a pre-requisite to having Adopted by her husband, W S. A hearing on the petition was held September 9, 2008.

FINDINGS OF FACT

1. AM was born September 27, 2006. She currently resides with her Mother, Step-father and half-brother at 44 Penn Street, Montgomery, PA 17752.
2. A's mother is LS, age 20.
3. A's father is JM, age 28.
4. Mrs. S and Mr. M never lived together; they had only a casual dating relationship which lasted about one month.
5. In December 2006 Mother filed a custody petition. A conference was held in January 2007 and a temporary Order was entered at that time. The matter was scheduled for a second conference in March.
6. At the time of the conference in March 2007, Father did not appear. An Order was entered nevertheless, which Order continues to this date, and provides for primary custody of A with her mother, and visits with her father on Thursdays and Sundays of each week.
7. Father began visiting with A after entry of the first custody order and, according to records kept by Mother (Petitioner's Exhibit #2), he saw her 19 times from January 11, 2007, through April 29, 2007, missing several visits because A was ill.
8. Father has not seen A since April 29, 2007.

9. Father has not called A, mailed her any letters or cards or sent any gifts, since April 29, 2007.
10. Father has been incarcerated in a state correctional institution since January 2, 2008, having been sentenced on a DUI charge and a probation violation to two to five years incarceration. His minimum release date is January 2, 2010.
11. Father has three older daughters to another woman, born in June 1999, October 2001 and May 2006, and a younger son to his current girlfriend, born in early 2007.
12. Sometime just prior to the cessation of Father's visits with A, Father and his girlfriend and their son visited with Mother and A, which visit was congenial.
13. Father and the mother of his three older daughters filed custody petitions against each other in late July 2007. A conference was held on September 5, 2007, and according to the Order entered that date, "Father walked out of the conference, stating he did not want any custody rights." (See No. 07-20,994.)
14. Mother and W S married on December 19, 2006. They have a son born of their marriage.
15. A calls Mr. S "daddy". She does not know Mr. M.

DISCUSSION

Mother seeks termination of Father's parental rights pursuant to 23 Pa.C.S. Section 2511(a)(1), which provides as follows:

§ **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 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.

The Court also notes the legislature's direction to consider the following:

(b) **OTHER CONSIDERATIONS.**-- The court in terminating the rights of a

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), (6) or (8), 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. Section 2511(b). In light of the above findings, the Court believes termination is appropriate under subsection (a)(1), as Father has failed to perform parental duties for a period in excess of six months immediately preceding the filing of the petition, and termination of parental rights would best serve A's needs and welfare.

As noted above, Father has had no contact with A, either in person or otherwise, since May 2007. While he indicates his lack of contact in 2007 was based in part on the "custody battle" he was fighting at the time with the mother of his three older daughters, such would not serve to excuse his lack of contact with A even were the Court to find Father credible in this regard, which it does not.¹ Further, his incarceration in 2008 does not excuse his lack of efforts to maintain a relationship with her as a parent's responsibilities are not tolled during incarceration; father must show that he utilized those resources available while he is in prison to continue a close relationship with his child. See In re Adoption of CLG, 2008 Pa.Super. 198 (2008). Father admits he made no efforts at all, indicating that he plans to start when he is released. In sum, Father has performed no parental duties whatsoever for over fifteen months, since A was about seven months old.

With respect to whether termination would best serve A's needs and welfare, the Court notes the fact that A has no idea who Father is, let alone that she has no bond with him. Further, Father's incarceration and his plan to "start" the relationship when he is released ensure that no bond will be formed in the foreseeable future.² Currently, A lives with Mother, Step-father and her half brother as a family unit, and if her father's parental rights are

1 Father also testified that his visits with A terminated because his attempts to see her were thwarted by Mother, that Mother did not answer the phone when he called or come to the door when he knocked. Mother denied that such was the case and the Court finds Mother more credible and thus discounts Father's professed excuse.

2 While Father testified to his minimum release date, there is no guarantee he will indeed be released at that time, and Father's maximum release date is January 2013.

terminated, she will be adopted by her step-father, who at this point in her life is the only father she has known. It is clear to the Court that A's needs will be best served by such a course of action.

CONCLUSIONS OF LAW

1. The Court finds that Mother has established by clear and convincing evidence that Father's parental rights should be involuntarily terminated under 23 Pa.C.S. Section 2511 (a)(1).
2. The Court finds that Mother has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of A will be best served by termination of Father's parental rights.

Accordingly, the Court will enter the attached decree.

By The Court,

Dudley N. Anderson, Judge

cc: Melody Hanisek, Esq.
Andrea Pulizzi, Esq.
Ryan Gardner, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson