

IN RE: : IN THE COURT OF COMMON PLEAS
: OF LYCOMING COUNTY
:
K.J.; T.J.; T.J.; L.B : ORPHAN'S COURT DIVISION
:
MINOR CHILDREN : NO. 6084 ADOPTION

Date: June 9, 2009

**OPINION IN SUPPORT OF THE ORDERS OF APRIL 22, 2009 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Mother, ZF, and Father, SJ have separately appealed this Court's orders of April 22, 2009 terminating the parental rights of both parents, to their children, K.J., age 8, T.J., age 6, and T.J., age 6. In addition, the order terminating Mother's rights also terminated her rights to the child, L.B., age 1, who has a different father.

The Petition for Involuntary Termination of Parental Rights had been filed on January 13, 2009. The children had been in placement since September 2007. In terminating the rights of each parent to these children we found that neither parent had nor could remedy the lack of parenting care which had led to the children's placement.

Mother filed a Notice of Appeal on May 19, 2009 with the required Concise Statement of Matters Complained of on Appeal pursuant to Rule 1925(b), Pennsylvania Superior Court docket number 864 MDA 2009. Father also filed a Notice of Appeal with attached Concise Statement on May 22, 2009, Pennsylvania Superior Court docket number 931 MDA 2009.

Upon review of the Concise Statement of Matters Complained of on Appeal of both Mother and Father this Court believes that its Findings of Fact and reasoning as set forth in our Adjudication of April 22, 2009 are self explanatory and adequately set forth the reasons for this Court's determination that the parental rights of each parent should be terminated. Nevertheless,

we will proceed in this opinion to briefly and specifically address the matters raised in the parents' Concise Statements.

I. Mother's Concise Statement of Matters

Mother's first concise statement is a brief reference by counsel that refers to counsel's belief that a filing of an Ander's Brief by counsel is anticipated once the record is available. Mother's second concise statement is that the sufficiency of the evidence did not support a termination of parental rights. To the contrary, the credible evidence clearly demonstrates that during the 15 months her children were in placement Mother failed to obtain adequate housing, failed to provide a means of support for the children and failed to perform or demonstrate the ability to perform essential parental care necessary for the needs and welfare of the children.

Mother had been offered and directed to obtain services to help her care for the children from the Lycoming County Children and Youth Agency since April 2007, when she and the children were evicted from their home. From that time until the time of the termination hearing, Mother had not been able to obtain housing that was appropriate for herself and the children. Mother was unable to provide any other appropriate resource person to care for her children. Rather than cooperate with the Agency, Mother would continually frustrate the Agency's efforts to provide her support often ignoring Agency planned visits and offered services. Mother did not pursue obtaining and maintaining appropriate employment and has not been able to demonstrate any ability to support the children financial, despite having the ability to do certain types of work of a nature that should be available in the community to her and which from time to time she did avail herself. Regardless of her financial inabilities it is Mother's unwillingness to devote herself to giving personal care to the children that to this Court was the determining factor in deciding

upon the termination of her parental rights. Mother has not been able to progress in her parental relationship and function with the children beyond the ability to have one supervised visit per week with the children. During those visits she has been unable to demonstrate that she can care for and give appropriate attention to all three of the children for the few hours she is with them. She clearly does not have the interest in nor the ability to provide for all three of the children on a full time basis and probably could not even provide for one of the children on a full time basis. Her failure to function as a parent is not due to any mental or physical limitation but rather exists because of her unwillingness to apply herself in performing parental functions. In as much as Mother's inabilities have continued throughout the time the children have been in placement, since September 26, 2007, the best interest of these children require that her parental rights be terminated and that the children be afforded an opportunity to become members of a permanent home with appropriate parental care.

II. Father's Concise Statement of Matters

Father's Concise Statement of Matters raises five allegations of Court error. The first allegation is a boiler plate statement that the Agency failed to meet its burden in proving that the appellant's parental rights should be terminated. Our April 22, 2009 Adjudication clearly sets forth the manner in which the Agency did meet its burden demonstrating that Father's conduct for at least 12 months of almost completely disregarding his children evidence of not only a settled purpose to relinquish his parental claims but more clearly his refusal and failure to perform parental duties and provide parental care necessary for the childrens' well being. Even Father's post-petition conduct demonstrates that he can not or will not remedy his failures in not only that adjudication but in the references we hereafter make to the other four errors complained

of by Father. Further, we believe that our Finding of Fact No. 27 in and of itself demonstrates the Agency's burden was appropriately met as we specifically found as follows:

“27. Mr. Jones, nevertheless, did not attempt or request to visit his children from January 2008, until after the petition for termination of his parental rights was filed. Mr. Jones did phone the home where the children were residing in May and June of 2008 when a health issue as to T.J. arose, and again called at about the time school started in August. Otherwise, he has not visited, sent letters nor any gifts to the children. He has not otherwise contacted the children during the year preceding the filing of the petition. Contrary to his assertions, we find that he had not suffered nor is he suffering from any physical nor other inability which would have prevented him from being in appropriate parental contact and perform parental duties as to these children between January 2008 and January 13, 2009 when the petition was filed.”

The second allegation of Father is that the Court failed to take into account his medical problems in reaching our conclusion that he failed to perform his parental duties. This is incorrect. In our Finding of Fact No. 27, referenced above, we specifically found that the Father's physical limitations and other inabilities were not such as prevented him from performing parental duties. Father had asserted that bad knees kept him from traveling from Philadelphia to Williamsport to see his children or providing care for them. We simply found this not credible.

Father's third asserted error is that the Court “has no way of predicting how his current criminal matter may be resolved.” The Father does not dispute that he is required to register as a sexual offender and is listed on the Megan's Law website as being required to register for a 1993 spousal sexual assault. He also acknowledges that he has been charged with the criminal offense of failing to register as a sexual offender and is out on bail awaiting disposition of those charges which include failure to verify an appropriate address and providing accurate information as

required by Megan's Law. During the termination hearing Father and his "fiancé" Pauline White, with whom he lives (together with three other children ranging in age from 4 to 15) verified in their testimony that Father provided a registration address for Megan's Law purposes that was different from the address he actually lives at. According to their testimony at the termination proceedings this was done to avoid embarrassment to their other children. Regardless of the reason such misreporting is an acknowledged violation of the law. This Court relied upon this obvious criminal conduct only to point out that the Father's current home can not be confirmed as being a stable residence and that his ability to be available to provide parental care for his children is in doubt as he may face further incarceration.

Father's inability to provide a suitable and stable home for his children was one of the issues the Family Service Plans required him to address. During 2008, while the children were in placement, Father's imprisonment due to other criminal charges were a substantial contributing factor to the children remaining in placement and Father's incapacity to provide a home and essential parental care for them. (Please see discussion under Father's allegation of error No. 4 set forth below).

Father's fourth allegation of error asserts that the Court erred in determining that there was no significant parental bond between he and the children as "the Agency failed to present any evidence or testimony to support this allegation." Again, this is simply incorrect. First of all, the Agency established that the Father had no contact with these children from approximately December 2006 when Mother relocated from Philadelphia to the Williamsport area until after the children were put in placement in September 2007. Father made little effort to contact Mother and the children during that time. It appears that through Agency efforts of attempting to locate

the Father that he made contact with the Agency on or about November 30, 2007 presenting himself as a resource for the children and requesting visitation with them. In December 2007 the Father and his fiancé, Ms. White, visited with the children at the Agency in Williamsport. The Agency also obtained a favorable recommendation from the Philadelphia DHS which approved Mr. Jones of being reunited with and given physical custody of these children. A plan of reunification was put into effect at a dependency hearing held before the Honorable Richard A. Gray on January 11, 2008 under which Father would have increasing visitation contact with the children, progressing to his assuming their care and custody not later than February 1, 2008. Following what was reported by Father as being a successful visit and time of custody with the children in Philadelphia from January 18 through January 21, 2008, Father was arrested on or about January 21, 2008 on criminal charges of possession of unlawful controlled substances in Philadelphia. The Agency determined not to move forward with further contact between the Father and the children until those charges were resolved. In April 2008, Father pled guilty to possession of a controlled substance, marijuana, in Philadelphia, and was sentenced to pay fines and court costs. It also appears that he had been incarcerated for a period of time between January and April 2008 due to these charges. Despite having the ability to contact the children, Father had no contact with the children from January 21, 2008 at least from April 2008 until after the time the petition was filed on January 13, 2009.

Regardless of the criminal charges or incarceration Father could have contacted the children and performed parental duties beginning in April 2008. The Father did not do so nor did he make any effort. He did not send them any letters or gifts either. The only interest he expressed in the children was to make two telephone calls to the childrens' foster parent to

inquire about the health of one child in June 2008 and some general inquiries about schooling in the month of August 2008. These failures to be a part of his children's lives are evidence of his willingness to relinquish his parental claims to these children. After having made contact with them in January 2008 and taking them to his home in Philadelphia for an extended visit his sudden withdrawal once again from their lives was contrary to their needs, welfare and mental well being. Certainly, his neglect of these children was contrary to their physical well being. Father's absence from the childrens' lives supports our finding that no parent-child relationship bond existed between he and the children and further the Father's actions did away with the opportunities for this bond to be established.

The Father did not attempt to come to Williamsport to visit the children until February 12, 2009, almost a month after the termination petition had been filed. At that visit, the Father did not cooperate with the Agency staff, failing to follow the procedures they had established for the visit. Most significantly the children, upon arriving at the visitation site walked by their Father when they came in who was seated in the hallway near the entrance door without giving him any sign of recognition, affection or pleasure of any type. During that visit the Father, instead of trying to relate to the children, kept making telephone calls on his cell phone. There was no demonstration of any parental bond between he and the children during the time of that visit. Clearly, no such bond exists.

The Father's fifth and final allegation of error asserts that the Court incorrectly determined that the Father failed to remedy the situations leading to the removal of his children. Simply stated, the reason the children were removed from the Father was because of his non involvement in their lives and the failure to provide a suitable and stable place for them to live.

As of the date of the termination hearing, those conditions continued to exist as set forth above. Clearly the Father has failed to remedy the situation for a period well in excess of two years as of the time of the termination hearing.

Accordingly, this Court believes that its Adjudication and Orders terminating the parental rights of each of these parents to their children should be affirmed.

BY THE COURT,

William S. Kieser, Senior Judge

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