

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

IN RE: : No. 6180
INVOLUNTARY TERMINATION OF :
PARENTAL RIGHTS TO R.E. :

OPINION AND ORDER

After a full hearing on the Petition for Involuntary Termination of Parental Rights filed on August 3, 2009 by Ruth M. C, this Court finds that Ms. C has shown by clear and convincing evidence that the parental rights of James H and Billie C to R.E. should be terminated based upon 23 Pa.C.S.A. §2511(a)(1). The court also finds that termination of the parental rights of both parents is in the best interest of the child.

FINDINGS OF FACT

R.E. was born on August 15, 1998. R.E.'s biological Mother is Billie E. C. R.E.'s biological Father is James H. R.E. has lived with her maternal grandmother, Ruth M. C, for four years. R.E.'s sister, T. E., also lives with them in their home in Jersey Shore, Pennsylvania. Mrs. C was awarded primary custody from Jefferson Family Court in Kentucky in 2005. On April 18, 2007, the primary custody of Ruth C was confirmed in Lycoming County. R.E. is in sixth grade, on the honor roll, is the band manager, and is involved in other school activities, including an environmental club called The Clean and Green Program. Although R.E. has some combination of Asperger's or Autism, she appears to be very high functioning and clearly answered questions posed to her by the Court.

James H

R.E.'s biological father, James H, resides at 1226 Second Avenue, Altoona, Pennsylvania. It is undisputed that Mr. H has not been to see R.E. since 2007. Mr. H is over \$1,000.00 in arrears on his child support payments, and the last child support payment made by him was in February or March of 2008. Although he indicated that he called R.E. on October 28, 2009 to report to her that his mother, R.E.'s grandmother, had died, Mr. H admitted that he has not sent any cards or gifts to R.E., and offered no reason for why he has not seen her.

Billie E. C

R.E.'s biological mother is Billie E. C. Although this Court does not know where she currently resides, the last address provided to this Court by Ms. C was 6128 Walkers Corner Road, South Byron, New York, 14422. Ms. C failed to appear on December 18, 2009, for day two of the termination hearing, despite written notice and notice given in open court. None of the parties present at the hearing had current information as to Ms. C's whereabouts. Ms. C signed a voluntary termination, voluntarily relinquishing her parental rights to R.E. on September 26, 2007. Although Ms. C testified during day one of the termination hearing, that she felt pressured to sign the agreement, she admitted that she did so in exchange for her mother's agreement to drop her support obligation. Besides occasional items given to R.E. by her mother, such as used clothing and a drum set during the summer of 2009, Ms. C has failed to provide any financial support to R.E. since 2007, nor any necessities beyond some used clothes over time. Ms. C has six living children, but doesn't have custody of any of them. She has had three residences in the last year. She moved to South Byron, New York about a week before the November 17, 2009

hearing. Ms. C saw R.E. two times during the summer of 2009, once when picking up a drum set during one of her moves, and on one other occasion. Ms. C's has only had one unsupervised visit with R.E. in approximately five years. This took place sometime in 2005 or 2006. In short, neither parent has provided any meaningful emotional support nor have they performed any parental duties during the relevant time period.

CONCLUSIONS OF LAW

1. The Petitioner has shown by clear and convincing evidence that the parental rights of James H and Billie E. C should be terminated based upon 23 Pa.C.S.A. § 2511(a)(1).

2. The Petitioners have shown by clear and convincing evidence that termination of the parental rights of James H and Billie E. C best serves the needs and welfare of the child, R.E.

DISCUSSION

Termination of parental rights is an issue of constitutional dimensions because of the fundamental right of an individual to raise his or her own child. Pennsylvania courts have held, however, that "A parent's basic constitutional right to custody and rearing of his or her child is controverted, upon the failure to fulfill his or her parental duties, to the child's right to have proper parenting and fulfillment of his or her potential in a permanent healthy safe environment." In re: J.A.S., Jr., 820 A.2d 774, 782 (Pa.Super. 2003), *citing* In the Interest of Lilley, 719 A.2d 327 (Pa.Super. 1998).

The statute permitting involuntary termination of parental rights in Pennsylvania, 23 Pa.C.S.A. § 2511, sets forth certain irreducible minimum

requirements of care that parents must provide for their children. Under 23 Pa.C.S.A. § 2511(a)(1), a parent's rights may be terminated when the parent has refused or failed to perform parental duties for at least the six months preceding the filing of the petition. The court may not consider efforts initiated subsequent to receiving notice of the filing of the petition. 23 Pa.C.S.A. 2311(b). However, the six month time period should not be applied mechanically; instead, the court should consider the whole history of the case. In the Interest of A.P., 692 A.2d 240, 245 (Pa.Super. 1997).

Although there is no easy definition of parental duties, they entail meeting the needs of a child. These needs include physical and emotional needs, and cannot be met merely by a passive interest in the development of the child. The parental obligation is a positive duty, which requires affirmative performance. In re Shives, 525 A.2d 801 (Pa.Super. 1987). Appellate courts have set forth a very strict standard for measuring a parent's performance of parental duties. A parent must exert himself to take and maintain a place of importance in a child's life. In re Adoption of M.J.H., 501 A.2d 648 (Pa.Super. 1985). A parent has a continuing duty to love, protect and support his child and to maintain communication and association with the child even after separation. In re V.E., 611 A.2d 1267 (Pa.Super.1992). He must demonstrate a continuing interest in his child and make a genuine effort to maintain communication and association with the child. In re Adoption of McCray, 331 A.2d 652 (Pa. 1975). He must pursue a course of conduct consistently aimed at maintaining the parental relationship. Adoption of S.H., 383 A.2d 529 (Pa. 1978).

Once a court has found grounds for termination under Section 2511(a)(1), the court must then 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 on the child's needs and welfare. In re C.M.S., 832 A.2d 457, 464-5 (Pa.Super. 2003), *appeal denied* 859 A.2d 767 (Pa. 2004).

The Petition for termination was filed on August 3, 2009. The time period at issue therefore is the six month period preceding that time, or February through August of 2009. As discussed in the Findings of Fact, Mr. H admitted that he had absolutely no contact of any kind with R.E. during the relevant time period. Mr. H did not visit R.E., call R.E., provide support, or even provide her with a card or gift for her birthday on August 15, 2009. Mr. H did absolutely nothing at all in the performance of parental duties during this time period, and in fact since 2007.

Once a court has determined a parent has not performed his parental duties, the court must then examine the individual circumstances of the case and evaluate any explanation offered to determine whether involuntary termination is clearly warranted. In re E.S.M., 622 A.2d 388 (Pa.Super. 1993). Parents, however, are expected to exhibit reasonable firmness in attempting to overcome any barriers confronting them. Commonwealth v. Arnold, 665 A.2d 836 (Pa.Super. 1995). A parent must act affirmatively, with good faith and effort, to maintain the parent-child relationship to the best of his ability, even in difficult circumstances. In re Adoption of Dale A., 683 A.2d 297 (Pa.Super. 1996). A parent is expected to use all available

resources to preserve the parental relationship. In Interest of Q.J.R., 664 A.2d 164 (Pa.Super. 1995).

Mr. H acknowledges he has had no contact with R.E. since 2007. No real explanation was offered, however, for this lack of contact.

Pennsylvania case law is filled with examples of parents who, although faced with obstacles, nonetheless lost their parental rights. Parents incarcerated, mentally retarded, and addicted to drugs are all held to a high standard of conduct, requiring them to use all available resources and make every effort to maintain a relationship with their children. Mr. H faced no obstacle. He simply chose not to maintain a relationship with R.E..

Ms. C's contact with R.E. has not been much better. Ms. C saw her daughter two times during the relevant time period. The first time she saw her was when she contacted Ms. C and advised that she was moving and needed to get rid of a drum set. R.E. accompanied her grandmother to pick up the drum set. The second occasion was when R.E.'s brother was visiting. Ms. C was in the same location as her daughter on this day for about one and one-half hours. Ms. C's contact with her daughter has been sporadic at best. She has come in and out of her daughter's life when it suits her and has not demonstrated a firm intent to be a part of her daughter's life. The only explanation provided by Ms. C for her lack of involvement with R.E. in this area was that she can't get a job in Lycoming County. As Ms. C has failed to act affirmatively to maintain a relationship with her minor daughter, involuntary termination is warranted.

Here, the conduct of James H and Billie C does not rise to the level of reasonable firmness. The evidence presented in this case shows no adequate excuse for the failure of James H and Billie C to maintain contact with R.E. during the six months at issue.

The court must all consider any post-abandonment contact between the parent and the child. In this case, Mr. H testified that he made one telephone call to R.E. on October 28, 2009 to tell her that her grandmother had died. Neither Mr. H nor Ms. C sent cards or called R.E. on her birthday on August 15, 2009.

The third inquiry to be made by this Court deals with the needs and welfare of R.E.. In considering the needs and welfare of a child in a termination case, the court must consider the emotional bond that exists between the child and the parent and the effect that severing that bond will have upon the child. The bond the court is interested in is a parental bond. In In re: J.L.C. and J.R.C., 837 A.2d 1247, 1249 (2003), the court stated,

It is clear from the limited involvement Father had with the children that he did not bond with the children *in the way a parent should bond with his or her children*. It is not enough that ‘both boys know their father,’ ‘‘enjoy being with him,’’ and ‘‘love their dad.’’...That is not bonding. Being ‘‘Uncle Daddy’’ is not enough. Being a parent means assuming responsibility so that a real bond develops, not just having a casual relationship with one’s children. Children often know, love, and sometimes do have an enjoyable time with parents who have little to do with their upbringing, and even with parents who physically and mentally abuse them. The key is whether a bond has developed.

Although R.E. indicated that she loves her parents, it is clear that the noninvolvement of Mr. H, and sporadic contact with Ms. C is upsetting and stressful to her. R.E. indicated to the Court that she never knows when her mother will show up, and there have been times when she thought that one of them was visiting and

then they let her down. Sometimes when she talks to them she indicated her school grades will go down, because then she starts to worry. R.E.'s Grandmother, Mrs. C testified that consistency is very important in R.E.'s life, especially in light of her medical condition. Although the parties have demonstrated a casual relationship with R.E., neither party has demonstrated any real commitment to actual parenting, and accordingly, no **parental** bond has been established.

The evidence does not indicate that any psychological impact upon R.E. will result from a permanent separation from either one of her biological parents. By contrast, R.E. has formed a strong parental bond with her maternal grandmother, Ruth C, who has functioned in all respects as R.E.'s parent since 2005. Ms. C has provided financial, physical and emotional support to R.E.. Mrs. C has had physical custody of R.E. since 2005, and has been a consistent, permanent fixture in R.E.'s young life. Termination of the parental rights of James H and Billie C will permit Ruth C to adopt R.E., which will guarantee her a permanent home with a parent who loves and is capable of meeting her needs. Providing a permanent, stable home to children, such as R.E., is one of the goals of the termination statute. R.E. needs and deserves a parent who is committed to fulfilling all of the duties of a parent. Ruth C is willing to do all of this and more. For these reasons, the granting of the termination gives "primary consideration to the developmental, physical and emotional needs and welfare" of R.E.. See 23 Pa.C.S.A. § 2511(b).

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DECREE

AND NOW, this 31st day of December, after a full hearing on the petition for involuntary termination of the parental rights of James H and Billie C to R.E., the court grants the petition. It is ORDERED and DIRECTED that the rights of James H and Billie C are terminated now and forever. R.E. may be the subject of adoption proceedings without any further notice to James H and Billie 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 them at:

Department of Public Welfare
Adoption Medical History Registry
Hillcrest, Second Floor, P.O. Box 2675
Harrisburg, PA 17110-2675 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,

Richard A. Gray, J.