

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE ADOPTION OF: : NO. 6185  
:   
CJD : ADOPTION

OPINION AND ORDER

Before the Court is a Petition for Involuntary Termination of Parental Rights filed by the Mother of CJD, LS (hereinafter “Mother”), on August 11, 2009.<sup>1</sup> Mother seeks to terminate the parental rights of C’s biological father, RKD (hereinafter “Father”),<sup>2</sup> as a pre-requisite to having C adopted by her husband, DS (hereinafter “Husband”). A hearing on the petition was held October 23 and December 17, 2009.<sup>3</sup>

FINDINGS OF FACT

1. CD was born June 30, 2004. He currently resides with his Mother, Step-father and half-brother<sup>4</sup> at 548 South Main Street, Jersey Shore, Pennsylvania.
2. C’s mother is LS. As noted, she resides at 548 South Main Street, Jersey Shore, Pennsylvania.
3. C’s father is RD. He resides at 304 Logan Street, Lock Haven, Pennsylvania.
4. Mother and Father resided together from 2001 through January or February

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1 Mother is represented by Rebecca Reinhardt, Esquire.

2 Father is represented by Frederick Lingle, Esquire.

3 By Order dated November 30, 2009, Jeffrey Yates, Esquire, was appointed C’s guardian ad litem in this matter.

4 Mother has another son, EE, to a previous relationship. She also filed a petition to terminate the parental rights of E’s father but after the hearing on October 23, 2009, E’s father signed a Consent to Adoption. It is assumed that Husband will proceed with the adoption of E.

2008. At the time of their separation, Mother left the residence and Father did not learn of her new residence or telephone number until April 2009.
5. Mother and Father did not have a custody agreement or Order at the time of their separation.
  6. On March 24, 2008, the Court entered a stipulated custody Order whereby Mother assumed “full and primary legal custody” of C, and Father “will have no custody or financial obligation to the child.” This stipulation was prepared by Mother and signed by both parties on March 10, 2008.<sup>5</sup>
  7. Father visited with C in June 2008 and again in August 2008. He has not visited with C since August 2008.
  8. Father made numerous attempts to contact Mother through her mother and grandmother but was for the most part unsuccessful.
  9. Father was sentenced to incarceration in November 2008 and remained incarcerated, except for two furloughs, through September 2009. Father’s girlfriend contacted Mother just prior to his incarceration, at his request, to let her know he was going to jail and that he did not want C to see him in jail but that he would stay in contact with him.
  10. Father’s girlfriend attempted to arrange a visit while Father was on a furlough over Easter 2009, by calling Mother<sup>6</sup> on Thursday night, but Mother said she had to think about it and did not call her back until late Saturday night. The call was not received until Sunday morning and when the girlfriend returned Mother’s call, Mother said she had made other plans and did not allow a visit.
  11. Father attempted to arrange a visit while on another furlough in June 2009

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<sup>5</sup> See Plaintiff’s Exhibit #1.

but Mother and Husband were to be married the next day and Mother simply told Father that and hung up on him.

12. Father has not given C any birthday or Christmas cards or gifts since prior to his separation from Mother.

13. Mother has attempted to keep C from Father and has been, for the most part, successful.

14. Father has never paid child support to Mother since they separated, but did give her \$300 shortly after separation. Mother has never requested child support from Father.

15. Mother and Husband began residing together in January or February 2008.<sup>7</sup> They were married in June 2009.

16. C has a good relationship with Husband.

17. Father feels frustrated by Mother's efforts to keep him out of C's life and wants to re-establish his relationship with his son.

## DISCUSSION

Mother seeks termination of Father's parental rights because "there has been no fulfillment of parental obligations in any way by a natural father",<sup>8</sup> so it is presumed that she is proceeding pursuant to 23 Pa.C.S. Section 2511(a)(1), which provides as follows:

### § 2511. Grounds for involuntary termination

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<sup>6</sup> Father's girlfriend had been able to learn Mother's telephone number through a ruse.

<sup>7</sup> Although Husband testified that it was January 2008, Mother testified that she and Father separated in January or February 2008. It is assumed that Mother did not begin residing with Husband until after she separated from Father.

<sup>8</sup> See Petition for Involuntary Termination of Parental Rights of Father, filed August 11, 2009, at paragraph 9.

(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 not appropriate, for although Father has failed to perform parental duties for a period in excess of six months immediately preceding the filing of the petition, the Court believes termination of Father's parental rights would not best serve C's needs and welfare. *See In re C.T.*, 944 A.2d 779 (Pa. Super. 2008)(after the trial court finds that the statutory grounds for termination have been satisfied, it must then determine whether the termination of parental rights serves the best interests of the child).

As noted above, Father has had no contact with C, either in person or

otherwise, since August 2008. While he indicates his lack of contact was based in part on his incarceration, such does not excuse his lack of effort to maintain a relationship with C, as a parent's responsibilities are not tolled during incarceration; a 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). Further, although Mother did indeed place obstacles in his way, and did her best to keep him out of C's life, the Court believes the efforts Father made to overcome those obstacles were woefully insufficient, if not pathetic. He has expressed, however, what the Court believes to be a sincere desire to right the past wrongs, and, as explained, *supra*, the Court believes it in C's best interest to give him that chance.

This case is unlike those where the absent parent has never played a role in the child's life; Father and Mother lived together with C from his birth through January or February 2008, when C was three and one half years old. C knows who Father is, and, while he may have a good relationship with Husband, he does not think that Husband is his father. Mother presented no evidence that C and Father had anything other than a normal, healthy, father-son relationship during the time they all resided together. Apparently, C loves and wants very much to see his father, as Mother told Father's girlfriend that when the Easter 2009 visit did not take place, "C cried for a week."

Father has petitioned the Court to modify the current custody Order to provide him with regular periods of visitation with C.<sup>9</sup> In light of Father's sincere interest in re-establishing a relationship with C, the Court believes that having

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<sup>9</sup> While this petition may not be considered in deciding whether Father has failed to perform parental duties under Section 2511(a)(1), the Court believes it may be considered in a "best interest" analysis as evidence of Father's interest in re-establishing a relationship with C.

Father in his life would benefit C. *See In the Interest of M.B.*, 674 A.2d 702 (Pa. Super. 1996)(desirable to continue contact between parent and child absent “grave threat” to the child), and *B.A. v. E.E.*, 741 A.2d 1227 (Pa. 1999)(special weight and deference should be accorded the parent-child relationship). The Court is hopeful that with the entry of a custody Order, Mother will be more cooperative, and Father will be able to re-establish his relationship with C.

#### CONCLUSIONS OF LAW

1. The Court finds that Mother has established by clear and convincing evidence that Father has failed to perform parental duties for a period in excess of six months immediately preceding the filing of the petition
2. The Court finds that the developmental, physical and emotional needs and welfare of C will not be best served by termination of Father’s parental rights.

#### ORDER

And now, this 23rd day of December 2009, for the foregoing reasons, the Petition for Involuntary Termination of Parental Rights of Father, RD, is hereby DENIED.

By The Court,

Dudley N. Anderson, Judge