

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

**IN THE INTEREST OF** : No.: 6219  
:   
**PRM** : No. DP-22-09

**OPINION AND ORDER**

On or about June 14, 2010, the Lycoming Children and Youth Services Agency (“Agency”) filed a Petition to involuntarily terminate the parental rights of MP, father of PRM, a minor child born on April 17, 2009. The Petition alleged that the involuntary termination was appropriate based on sections 2511 (a) (1), (2), (5) and (8) of the Adoption Act of 1980, as amended (23 Pa. C.S. § 2511).

The hearing was held on September 16, 2010. At the hearing, numerous documents were admitted on behalf of the Agency. As well, Joseph Weber, the Permanency Unit Supervisor with the Agency testified. Respondent father participated in the hearing by telephone and testified on his own behalf.

Following the hearing, the parties were given an opportunity to submit Proposed Findings of Fact and Conclusions of Law. Such Proposed Findings and Conclusions were submitted on behalf of the Agency and the Guardian Ad Litem for the child. Father did not submit any Proposed Findings or Conclusions.

The natural mother to the child, TRM, signed a Consent to voluntarily terminate her parental rights on June 17, 2010. A hearing was held on August 12, 2010 to confirm the Consent at which time the mother’s Consent

was confirmed by Order of Court.

The child is one and a half years old having been born on April 17, 2009. The child has been in placement since May 14, 2009. He was adjudicated dependent on May 21, 2009. The father is 43 years of age and is presently incarcerated at the Minnesota Correctional Facility in Stillwater, Minnesota. In 2008, the father and mother lived together while the mother was pregnant. Father was aware that the mother was pregnant. Approximately one month prior to the birth of the child, the mother moved to Pennsylvania. The mother and father were in contact by telephone prior to the child's birth but the father did not know where the mother was residing.

In June or July of 2009, the father spoke with his relative, "Uncle Larry" who advised the father that the child was born and placed with the Agency. The father soon made plans to travel to Pennsylvania to take custody of the child. Father actually spoke with Mr. Weber by telephone and informed Mr. Weber that he was coming to Pennsylvania on or about July 19, 2009 to be with the child. While on his way to the bus station for the purpose of traveling to Pennsylvania, the father was involved in criminal activity which lead to his arrest on July 21, 2009.

As a result of the father's arrest and subsequent conviction, father remains incarcerated in the State of Minnesota. The father's earliest release date from either partial or total confinement is June 13, 2011. Effective

December 2010, however, the father will be eligible for transfer to a work release program.

In February of 2010, the Agency located the father through the Minnesota Department of Corrections Website. The father spoke with Mr. Weber on February 16, 2010. At that time, the father provided Mr. Weber with one or more family resource possibilities for the child, including their specific addresses.

The father has what can be best be described as a suspect history which includes homelessness, incarcerations and Bipolar Disorder. Father was previously convicted for conspiracy to commit robbery and possession of firearms. Over the last 20 years, he has been incarcerated for substantial periods of time on at least three separate occasions with the longest period of time being four years.

On March 21, 2010, father wrote a letter to his child. He asked how she was doing, noted that he missed her, was looking at her picture, could not put it down, was sorry to hear that she had an ear infection but assured her that she would get well soon and referenced the child's "big sister". He noted that he would be home soon and signed the letter "love your dad, Michael Pickens." (Agency Exhibit 36).

By letter dated March 24, 2010, father wrote a letter to the Agency Caseworker assigned to the case suggesting two additional resource placement

possibilities, requesting that he be sent another picture of the child, asking the caseworker to kiss the child for him, indicating that he would send a card soon and that he did not have any “mone (sic) now”. (Agency Exhibit 37).

Following the father being contacted by the Agency, he maintained some contact with the Agency Caseworker through letters and telephone calls inquiring about the child. As well, he wrote letters to the child, claimed to have arranged for a third party to buy the child a teddy bear and sent “some drawings” to the child. He inquired of the Agency as to who he could send money to on behalf of the child but claims to have never received a response. He also claims he wrote to the Court for the purposes of determining who represented his interests and to inquire as to the status of any legal proceedings but apparently never received a response. He did discover that the attorney who was initially assigned to represent him no longer was involved and that his representation was assigned to a different attorney.

The father has never had any personal contact with the child. The father has never provided any financial support for the child. The father has never provided the child with any food, clothing or shelter. The father is not a resource for the child at the present time and will not be a potential resource for the child until at least June of 2011.

During the father’s discussions with the Agency representatives, he was advised that there were certain things that he needed to do in order to

foster the relationship with his child. These things included the father maintaining contact, providing gifts, working with the Agency Caseworker for a release plan, providing resources for bonding with the child, participating in a parenting program and participating in other programs to improve himself while in prison.

The father has maintained some contact with the child, provided at least some gifts by way of a teddy bear and drawings, worked with the Agency with respect to providing resources for the child and has participated in one program as provided in the prison system. The father has no definite plans upon his release.

The child has developed no bond whatsoever with either of her natural parents. The child has been in placement with the same resource family since May 2009. She is in good health and she is developmentally on track. The resource parents would adopt the child if the father's parental rights are terminated.

At the hearing, Mr. Weber testified that "according to a psychiatrist" who has been evaluating the child, the child has bonded very well with his resource parents and that the termination of the parental rights of the father would be in the best interest of the child and would promote the needs and welfare of the child, as well as the child's physical, mental, developmental and emotional needs. The Court notes that father's attorney did not object to

this blatant hearsay testimony.

“In a proceeding to involuntarily terminate parental rights, the burden of proof is on the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so.” In re Julissa O., 746 A.2d 1137, 1139 (Pa. Super. 2000). “The standard of clear and convincing evidence is defined as testimony that is so ‘clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of precise facts and issues.’” Id. quoting Adoption of Atencio, 539 Pa. 161, 650 A.2d 1064, 1066 (Pa. 1994).

As per case law, the Court’s first inquiry is focused on the conduct of the father. More specifically, in order to terminate the father’s rights, the Court must be satisfied by clear and convincing evidence that the father’s conduct meets the grounds for termination as delineated by statute. In re Z.P., 994 A.2d 1108 (Pa. Super. 2010).

The Agency seeks termination on several grounds. Among those grounds are Sections 2511 (a) (5) and (a) (8). It is clear, however, that these sections do not apply because the father was incarcerated and mother had custody of the child. In re Z.P., supra. at 1123 n.2; In re: C.S., 761 A.2d 1197, 1200-01 (Pa. Super. 2000).

The Agency argues that because the father made plans to come to Pennsylvania to undertake his parental role both subsections would apply.

The clear wording of these subsections, however, requires that the child be removed from the father's care. 23 Pa. C.S.A. § 2511 (a) (5) and (8).

Accordingly, the Agency has failed to present clear and convincing evidence to terminate the father's parental rights under these subsections.

On the other hand, the Court does find that the Agency presented clear and convincing evidence to meet the statutory requirements of Subsections 2511 (a) (1) and (2).

With respect to subsection 2511 (a) (1), the Court finds that although the father may not have demonstrated a settled purpose to relinquish his parental claim, he has failed to perform parental duties for at least the six months prior to the filing of the Termination Petition.

As our courts have noted, there is no simple definition of parental duties. It is best understood in relation to the needs of a child which include love, protection, guidance and support. Our courts have held that this "parental obligation is a positive duty which requires affirmative performance." In re Z.P., supra. at 1119, quoting In re B., N.M., 856 A.2d 847, 855 (Pa. Super. 2004), appeal denied, 582 Pa. 718, 872 A.2d 1200 (2005).

Further, while the fact of incarceration does not in and of itself provide grounds for termination of parental rights, a parent's obligation to perform his parental duties does not cease because of incarceration. In re Z.P., supra. at 1120; In re B., N.M. supra. The incarcerated parent must utilize all

available resources to foster a continuing close relationship with the child and must act affirmatively to maintain the relationship even in difficult circumstances. In re Z.P., supra.

Clearly in this case, the father has done little more than provide responses to the Agency's inquiries and express a desire not to have his rights terminated. The father's words of love and support fall far short while his conduct speaks volumes.

While apparently on his way to take custody of the child, the father engaged in yet more criminal conduct resulting in further incarceration and continued separation from the child. His deliberate criminal conduct created a huge obstacle to any relationship with his child. Significantly, following his arrest and for months thereafter, he made no effort to contact his child until he was located through the Agency. While he sent letters of inquiry and expressions of caring to the child and/or Agency, there was no regularity or substance to the letters. Indeed, only one letter was presented as evidence. Further, the Court does not find credible the father's claim that no programs were available to him in the prison setting to improve his parenting skills. The Court also does not find credible the father's claims that he was unable to provide any financial support to the child. With only time on his hands, the father devoted very little to maintaining a place of importance in his child's life. His passive interest failed to provide the child with needed love, protection, guidance or support. Clearly, the

father has refused or failed to perform parental duties for a period of at least six months immediately preceding the filing of the Petition and the requirements of § 2511 (a) (1) have been met by the Agency.

With respect to § 2511 (a) (2), the Agency must prove three elements: (1) repeated and continued incapacity, abuse, neglect or refusal; (2) that such incapacity, abuse, neglect or refusal caused the child to be without essential parental care, control or subsistence, and (3) that the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied. In re Z.P., supra. at 1117, citing In Interest of Lilley, 719 A.2d 327, 330 (Pa. Super. 1998).

The evidence of record in this case clearly and convincingly demonstrates that the father is not capable of meeting the essential needs of the child and will be unable to do so within a reasonable time. Clearly because of his incarceration, the father is unavailable to take custody of the child. The estimated release date is speculative depending, of course, on the father's ability to satisfy the requirements of the Minnesota Department of Corrections. Even upon his release and travel to Pennsylvania, he would not be immediately ready to take custody of the child. Father would be required to meet the Agency's goals.

Father's ability to support the child is speculative at best. Although he has some experience and training in electronics, plumbing and building, the reality is that with his substantial criminal record, there is no guarantee

whatsoever that he would obtain employment. Father also has limited contacts in this area and housing would be an issue of concern.

The Court is also significantly concerned about the father's extensive criminal history and whether the father is even capable of living a law abiding life in the future. Even if the father were to take custody of the child, the Court is of the opinion that the risks are great that the father would become incarcerated in the future which would significantly impact on the welfare of the child. The Court notes that the father's repeated criminal activity in the past occurred despite the existence of his other children and that the decisions of the father show a pattern of incapacity to parent, particularly while not incarcerated. The Court has great concerns that the father would not be able to maintain a crime free life or properly care for the child upon release from incarceration.

Accordingly, the Court concludes that the elements of § 2511 (a) (2) have been proven by the Agency by clear and convincing evidence.

Once the statutory requirements for involuntary termination of parental rights have been established under subsection (a), however, the Court must consider whether the child's needs and welfare will be met by termination pursuant to subsection (b). In re D.W., 856 A.2d 1231, 1234 (Pa. Super. 2004). "Although subsections of the statute reference the 'needs and welfare of the child,' subsections (a) and (b) require a separate analysis." In the Interest of: A. S., 2010 PA. Super. 164 (September 9, 2010), citing In re I.G., 939 A.2d 950,

951 (Pa. Super. 2007).

The Court must take into account what is best known as a bonding analysis. More specifically, the Court must consider whether a bond exists between the child and the father and whether termination of the father's parental rights would destroy an existing, necessary and beneficial relationship. In re Z.P., *supra* at 1121.

The Court is convinced that the evidence of record clearly supports the conclusion that termination of the parental rights of the father best serves the child's needs and welfare. The child has lived with her resource parents for all but one month of her life. Clearly, a bond exists between the child and her resource parents. The resource parents are providing love, comfort, security and stability to the child, who is developing as hoped. While the father's words to his child through his letters may evidence an interest in the child, clearly no bond has been established and the termination of the father's interests would not destroy any existing, necessary or beneficial relationship. Indeed, given the father's history of criminal misconduct and unstable living arrangements, interaction between the father and the child may be detrimental to the child. The Court cannot understate the importance of the continuity of the relationship between the child and the resource parents.

While the father has expressed an interest in the child and has taken some steps towards establishing a relationship, the Court will not allow

the child to languish in foster care hoping for a relationship with her natural father that may or may not develop. "Above all else....adequate consideration must be given to the needs and welfare of the child." In re J.D.W.M., 810 A.2d 688, 690 (Pa. Super. 2002). The child needs the only family she has ever known and who has ever cared for her. The Agency has shown by clear and convincing evidence that the parental rights of the father MP should be involuntarily terminated to his daughter, PM. The requirements of the statute have been met and it is in the best interest and welfare of the child that his father's parental rights be terminated.

**ORDER**

**AND NOW**, this \_\_\_ day of October 2010 for the reasons set forth in the foregoing Opinion, the parental rights of MP to his daughter, PM are hereby involuntarily terminated.

By The Court,

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Marc F. Lovecchio, Judge