

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE ADOPTION OF: : NO. 6214
: A.M.B. and R.M.B. : ADOPTION

OPINION

Before the Court is a Petition for Involuntary Termination of Parental Rights filed by the Mother of A.M.B. and R.M.B., N.L.W., on March 31, 2010. Mrs. W. seeks to terminate the parental rights of the children's biological father, J.B., as a pre-requisite to having them adopted by her husband, T. M. W. A hearing on the petition was held May 17, 2010.

FINDINGS OF FACT

1. A.M.B. was born June 21, 1999. She currently resides with her Mother, Step-father, brother and half-brother at (address redacted).
2. R.M.B. was born August 24, 2001. He currently resides with his Mother, Step-father, sister and half-brother at (address redacted). The children's mother is N. W., age 29. She is married to T. W. and together they have a son, L. W.
3. The children's father is J.B., age 33. He is single.
4. Mrs. W. and Mr. B. were previously married, separated in 2001 and divorced in 2002.
5. After the divorce, Mr. B. had scheduled visits with the children one night each week and alternating weekends, but this schedule was not consistently followed.

6. At some point, Mr. B. moved to Newcastle, Pennsylvania, and the visits were changed to alternating weekends only.
7. Once Mr. B. returned to the Williamsport area, Mr. B. had no contact with the children for over six months but then filed a petition to modify the custody order.
8. Mr. B.'s last visit with the children was in November 2006.
9. Mrs. W. filed a Petition under the Protection From Abuse Act in November 2006, and a final Order was entered by consent, without any findings, on January 31, 2007. That Order prohibits contact by Mr. B. with the children. That Order expired January 31, 2008.
10. By stipulation approved by the Court on January 31, 2007, Mrs. W. withdrew her claim for child support and forgave arrearages, and Mr. B. agreed to have no periods of custody, granting Mrs. W. sole legal and physical custody of the children.
11. Mrs. W. filed a petition to change the children's last name to W. in March 2009.¹ After a hearing in May 2009 at which Mr. B. objected, the petition was denied. At the hearing, Mr. B. expressed a desire to see his children and was advised by the Court to file a custody petition in Family Court.
12. After receiving the name change petition in March 2009, Mr. B. asked Mrs. W. to see the children and she refused.
13. Mrs. W. filed another petition under the Protection From Abuse Act in July 2009. After a hearing in August 2009, an Order was entered which prohibits contact between Mr. B. and Mrs. W. only. Mr. B. is not prohibited from having contact with the children. Again, Mr. B. expressed

¹ Curiously, Mrs. W. had not yet married Mr. W. at the time of the name change request – they married on June 27, 2009.

a desire to see his children and again he was advised to file a custody petition in Family Court.

14. Mr. B. filed a petition for custody in October 2009. An evaluation of the family was ordered, but no visits were set up. After the evaluation was completed, a hearing was scheduled and although the Court received testimony from B.A., M.A., who conducted the evaluation, the remainder of the hearing was continued pending decision on the termination petition. The custody petition therefore remains pending and no visits have taken place.
15. Mr. B. was incarcerated in the County jail from February 2008 through April 2009.
16. While incarcerated, Mr. B. did send correspondence to the children. No correspondence had been sent from January 2007 through February 2008, however, and no correspondence has been sent since April 2009.
17. Mr. B. has paid no child support since mid-2006 and has not sent any gifts or provided any other form of support. He has not attended any school functions or sports activities.
18. A. suffered from depression at an early age and underwent counseling. Mrs. W. believes A.'s depression stemmed from Mr. B.'s sporadic involvement in her life at that time. Mrs. W. stated that in the past few years, when Mr. B. has not been involved with the children, A.'s emotional state has greatly improved. She has recently suffered frequent nightmares, however, once she learned of Mr. B.'s petition for custody. Mrs. W. stated that A. would like to be adopted by her step-father.
19. R. required counseling for anger issues but has improved. It is not evident

whether he has been told of the on-going legal proceedings.

20. Neither A. nor R. have asked to see their father in the three and one-half years which have passed since they last saw him.

DISCUSSION

The Court believes that a basis for termination in this case may be found in 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 finds that Mr. B. has failed to perform parental duties for a period of at least 42 months. He has been completely absent from the children's lives other than several pieces of correspondence sent to them while he was incarcerated. He expressed a desire to see them several times but did absolutely nothing to pursue that expression until he filed the custody petition in October 2009, and the Court does acknowledge that that petition had been pending for several months when the termination petition was filed, but that alone is insufficient to overcome the egregious lack of involvement Mr. B. has had with his children. After filing the petition in Family Court, he has paid no support, written no letters, sent no gifts,

made no telephone calls. He has done nothing which reflects a desire to be a father to his children.

Mr. B. protested that his requests to see the children were refused by Mrs. W.. Assuming for the sake of argument that Mr. B. made more than one or two requests, Mrs. W.' refusal should have been met with more than simple acquiescence.² Neither does Mr. B.'s incarceration serve as an excuse for the total failure to parent presented in this case.³ Most telling is Mr. B.'s explanation that he waited to seek custody until he "felt comfortable" in his life, that he had been "concentrating on [his] own life." While his custody petition prevents the Court from finding a settled purpose of relinquishing his parental claim to the children,⁴ that claim appears to be one of legal title only, as the Court finds that he has no true interest in being a father to these children, let alone that he has actually been a father to them. As the Court noted in Matter of Kapcsos, 360 A.2d 174, 177 (Pa. 1976)(quoting Appeal of Diane B., 321 A.2d 618, 620 (Pa. 1974), "Parenthood is not a mere biological status, or passive state of mind which claims and declines to relinquish ownership of the child. It is an active occupation, calling for constant, affirmative demonstration of parental love, protection and concern."

As the statutory grounds for termination have been met, the Court must also consider the following:

2 A parent must exercise reasonable firmness in resisting obstacles placed in the path of maintaining a parent-child relationship. See In Interest of Q.J.R., 664 A.2d 164 (Pa. Super. 1995).

3 A parent 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).

4 Actually, the January 31, 2007, stipulation whereby Mr. B. sold his right to be a father does evidence a settled purpose of relinquishing his parental claim to the children, but since that status did not continue up through the date of the filing of the petition for termination, such cannot be used as the sole grounds for termination. It does, however, speak volumes with respect to Mr. B.'s true intentions.

(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). Based on the evidence presented, the Court finds that termination of parental rights would best serve the children's needs and welfare.

As noted above, the extensive lack of contact has resulted in no relationship between the children and Mr. B. whatsoever. They have expressed no desire to see him, and indeed, A. has expressed a desire to be adopted by her step-father. They are now part of a stable family unit which includes a half-brother. While both children presented behavioral issues during and just after their parents' marriage, they have stabilized in the many months since the divorce. When interviewed by B.A. as part of the custody proceedings,⁵ neither child expressed a desire to resume contact with their father⁶ and both expressed concerns regarding his behavior. A. is fearful of being hurt again and does not want to be exposed again to "all of the fighting". R. said he does not miss his father but that if visits were to resume, he would be concerned about being subjected to excessive physical punishment. Indeed, as evidenced by the current PFA Order, Mr. B. has

5 All counsel agreed to consideration by the Court of the report and testimony of B.A., M.A., produced in connection with the custody proceedings, referred to in Finding of Fact No. 15, above.

6 Both children expressed ambivalence regarding resuming contact with Mr. B.

not been able to control his aggressive behavior even for his children's benefit and the Court feels fairly certain that were contact between Mr. B. and his children to resume, the difficulties between Mrs. W. and Mr. B. as a result of that aggression would have an adverse impact on the children, negatively affecting the progress which has been made in their lives. The Court thus finds that the lack of contact over the years has dissolved any bond which may have existed,⁷ and that termination of Mr. B.'s parental rights will best serve the children's interests and welfare.

CONCLUSIONS OF LAW

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

Accordingly, the Court will enter the attached decree.

By The Court,

Dudley N. Anderson, Judge

⁷ Although A. did express to Mr. A. that she still cares about her father, such feelings do not, in the Court's opinion, constitute the parent-child bond about which the Court would be concerned.