

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE ADOPTION OF: : NO. 6209
: :
A. R. R. : ADOPTION

OPINION

Before the Court is a Petition for Involuntary Termination of Parental Rights filed by the Mother of A.R.,¹ C.D., on February 16, 2010. Mrs. D. seeks to terminate the parental rights of A.'s biological father, D.D.R., as a pre-requisite to having him adopted by her husband, J. D. A hearing on the petition was held May 20, 2010.

FINDINGS OF FACT

1. A.R.R. was born December 31, 2000. He currently resides with his Mother and Step-father at (address redacted).
2. A.'s mother is C.D., age 29. She is married to J. D..
3. A.'s father is D.D.R., age 37. He is single.
4. Mrs. D. and Mr. R. were married in 1996, separated in February 2005 and divorced in June 2006.
5. After the separation and divorce, a custody Order was entered in Clinton County and Mr. R. had visits with A. on weekends.
6. Mr. R.'s last visit with A. was on December 31, 2007/January 1, 2008. Mrs. D. testified that she did not allow Mr. R. to see A. after that time because he had continually returned him late from visits.

¹ A. goes by the name "A." and will therefore be referred to as such hereinafter.

7. Mrs. D. filed to modify the Clinton County custody Order and a hearing was scheduled for February 29, 2008. In the meantime, she obtained a PFA Order in Lycoming County on February 25, 2008, which, in addition to prohibiting contact with Mrs. D., also prohibited contact by Mr. R. with A. until the Clinton County custody hearing.
8. On February 29, 2008, Mrs. D. appeared for the hearing in Clinton County but because of inclement weather, Mr. R. did not appear until after Mrs. D. had left. In any event, the Court found proper venue of the matter to lie in Lycoming County and transferred the case to Lycoming County. The Clinton County order also suspended Mr. R.'s custody rights until further order of the Lycoming County Court. While the docket reflects the transfer to this County,² inexplicably, nothing further was scheduled by the Lycoming County courts.
9. Mr. R. makes irregular payments of child support through the Domestic Relations Office. He currently owes an arrearage of approximately \$1300.
- 10.A. participates in wrestling, soccer and basketball but Mr. R. has not attended any of his events.
- 11.A. missed or was tardy 45 days of his first year in school,³ which included some periods of suspension for acting out. He was required to repeat kindergarten as a result. Mrs. D. testified that A. had difficulty with the separation and divorce, including being periodically subjected to hearing Mr. R. threaten Mrs. D. He participated in several counseling sessions in the summer of 2007 and two more in the spring of 2008. He also

2 The matter was docketed to Lycoming County no. 08 – 20,390 on March 25, 2008.

3 Although Mrs. D. testified A. began school in 2005, based on her further testimony that he is now in second grade, having attended two years of kindergarten and one year of first grade, the Court believes he must have started in 2006.

participated in counseling in school.

12.A. is now in second grade and is doing well in school, both academically and behaviorally. He is in good mental health and no longer has bad dreams or wets the bed.⁴

13.Mrs. D. and Mr. D. began living together in July 2008 when Mrs. D. and A. moved into Mr. D.'s home. Mr. and Mrs. D. were married on January 24, 2010. Mr. D. testified that A. has settled down since moving into his home.

14.According to Mr. D., A. very rarely speaks of his father and when he does, he refers to him as "D."

15.Mr. R. was told by certain members of Mrs. D.'s family that because of the PFA Order, they believed he should stay away from the entire family, not just Mrs. D..

16.Mr. R. did not know where Mrs. D. and A. lived after they moved into Mr. D.'s home, but he did know where her parents lived and in fact had sent a letter to her there. Further, Mrs. D. testified that she maintained the same cell phone number for the last four years and that Mr. R. knew that number. She also testified that a mutual friend had conveyed a communication from Mr. R. recently.

17.Mr. D. and A. have a good relationship.

18.Mr. R. testified that he has not made attempts to see A. because he has to work all the time and that he did not hire an attorney to pursue his custody rights because he cannot afford it.

⁴ While there was no direct testimony that A. in the past had bad dreams or wet the bed, from Mrs. D.'s testimony that he was not now having bad dreams or wetting the bed such may be reasonably inferred. It is further assumed that this behavior occurred during A.'s troubled first year of school.

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, as of the date of the petition, Mr. R. had failed to perform parental duties for a period of approximately 25 months. He last visited with A. on January 1, 2008, and has not called him, written to him, sent him gifts or cards or made any other effort at contact since. He has sporadically paid child support but even regular child support does not provide the necessary "constant, affirmative demonstration of parental love, protection and concern" required of parenthood. See Matter of Kapcsos, 360 A.2d 174, 177 (Pa. 1976)(quoting Appeal of Diane B., 321 A.2d 618, 620 (Pa. 1974).

The Court acknowledges that obstacles were placed in Mr. R.'s way: his custody rights were suspended, the Court did not follow up on its indication to Mr. R. that further proceedings would be scheduled, a PFA Order prevented Mr. R. from contacting Mrs. D. to arrange for custody and Mrs. D.'s family advised him to stay away from them as well as her. Significantly, however, when

questioned regarding his lack of effort to see his son, Mr. R. did not point to any of these obstacles but instead protested that he had to work many long hours and did not have time. Even had he relied on such for an excuse, however, 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), and here, Mr. R. made no effort to overcome the obstacles placed in his way. A simple petition to the Court, or even a letter inquiring about the status of the transferred case, would have brought the issue into the forefront and visits could have been re-established.

As the statutory grounds for termination have been met, the Court must also 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). Based on the evidence presented, the Court finds that termination of parental rights would best serve A.'s needs and welfare.

During his parents' marriage and through their separation, continuing even after the divorce, A. went through some difficult times, to say the least, missing an extraordinary number of school days and even being suspended from kindergarten for acting out. After A. and Mrs. D. no longer had contact with Mr.

R., however, A.'s behavior improved. He now attends school regularly and achieves good grades consistently. He is no longer having bad dreams or wetting the bed. A. has a good relationship with his step-father, but rarely speaks of his father and calls him by his first name, rather than "dad". From the open hostility displayed by the parties to each other in the courtroom, the Court drew additional evidence that their marriage and separation was volatile, and A. was a witness to that anger and aggression. The parties' relationship has not improved even though stabilized by distance and the PFA order; if A.'s visits with his father were resumed, the situation would again be problematic, accompanied by a good chance that A.'s previous difficulties would resurface. The lack of bond between father and son lends support to the notion that such should not be undertaken.

Finally, the Court wishes to note that the guardian ad litem, who is well-known to the Court and who has vast experience in this role, and in whom the Court has confidence, recommends termination. The Court has confidence in that recommendation, as it believes the guardian would not make such a recommendation if he believed A. still had a bond with his father.

CONCLUSIONS OF LAW

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

Accordingly, the Court will enter the attached decree.

By The Court,

Dudley N. Anderson, Judge

cc: Patricia Shipman, Esq.
Mark Taylor, Esq.
John Pietrovito, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson