

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

IN RE: : No. 6203
INVOLUNTARY TERMINATION OF :
PARENTAL RIGHTS TO G.M.T. :

OPINION AND ORDER

After a full hearing on the Petition for Involuntary Termination of Parental Rights filed on December 18, 2009 by Jason M. R and Katrina M. R, this Court finds that Mr. and Mrs. R. have shown by clear and convincing evidence that the parental rights of Brent T to G.M.T. should be terminated based upon 23 Pa.C.S.A. §2511(a)(1). The court also finds that termination of the parental rights of Mr. T is in the best interest of the child.

FINDINGS OF FACT

G.M.T. was born on December 6, 2004. G.M.T.'s biological Mother is Katrina M. R. G.M.T's biological Father is Brent T. Katrina R and Brent T were married at the time of the minor child's birth, separated in 2005, and subsequently divorced on February 1, 2008. On May 27, 2009 Jason M. R and Katrina R were married. Katrina R has had primary custody of G.M.T. since Katrina and Brent separated in 2005. G.M.T. has resided with Katrina R and Jason R since November of 2008.

G.M.T.'s biological father, Brent T, currently resides at 2524 W. Fourth Street in Williamsport, Pennsylvania. He has resided at this location for approximately three weeks. Since returning to Williamsport in February of 2010 this is his third place of residence. Prior to February of 2010 Mr. T resided in York, Pennsylvania, in

a “three-quarter” facility, or an unsupervised facility for groups of men in recovery from drug and alcohol abuse. Mr. T moved to the York area following the parties’ separation in 2005. Mr. T has not had physical custody of the minor child since the parties’ separation nor any unsupervised overnight visit with the minor child since separation in 2005 when GMT was approximately one year of age. No custody order was ever entered by the Court. Mr. T admitted that he was aware that he could file a Petition for Custody, but never did so. According to Mrs. R, efforts were always made to accommodate Mr. T’s requests to see G.M.T. Mr. T availed himself of this opportunity rarely, however, usually choosing to see her only on major holidays throughout the years. This Court finds the testimony of Mrs. R to be credible.

In the six months preceding the filing of the Petition to Involuntarily Terminate Parental Rights, Mr. T has had three (3) visits with the child. These visits occurred on September 5 and 6 and November 28, 2009. The visits were all supervised and totaled about 8 hours of time. Mr. T admitted that he slept during a portion of one of the visits. Although Mr. T attempted to place telephone calls to G.M.T. she often did not want to talk to him and Mr. T admitted that he has not spoken to G.M.T. since November of 2009.

In the six (6) months preceding the filing of the Petition Mr. T purchased a few items of clothing for G.M.T. and provided her with a birthday card and \$15.00 as a gift. Although Mr. T has called G.M.T. occasionally, and consistently paid his child support obligation throughout the relevant time period, he has offered to “sign off” on his rights to G.M.T. on three (3) separate occasions, in order to be relieved of

his duty to pay child support and in exchange for something to make it “worth his while.”

CONCLUSIONS OF LAW

1. The Petitioner has shown by clear and convincing evidence that the parental rights of Brent T 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 Brent T best serves the needs and welfare of the child, G.M.T.

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). Here, Mr. T's conduct was all about his own needs and convenience.

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 December 18, 2009. The time period at issue therefore is the six month period preceding that time, or June through December of 2009. As discussed in the Findings of Fact, Mr. T did very little to maintain a place of importance in G.M.T.'s life during the relevant time period. Throughout the time period, Mr. T spent approximately six hours, while awake, with G.M.T. None of the time with G.M.T. was spent unsupervised, nor did any overnight visits occur. Although support was paid and a few items of clothing were purchased, Mr. T did not exert himself to maintain a place of importance in G.M.T.'s life. As Mr. T moved from the Williamsport area when his daughter was approximately (1) year of age and has seen her only sporadically since that time, mainly on major holidays, he has not provided any meaningful emotional support to G.M.T., nor has he performed any parental duties.

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).

The only explanation offered for Mr. T's minimal amount of contact was that he had no vehicle, and his work hours prevented him from making the trip to Williamsport to see G.M.T. Mr. T admitted, however, that his brother and father traveled through or near his residence when traveling to Pennsylvania, and that he could have obtained rides with them.

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. T faced no obstacle. He simply chose not to maintain a relationship with G.M.T. Although Mr. T's Father traveled up to Williamsport from Maryland during the Christmas season, and would have provided Mr. T with a ride to Williamsport, Mr. T failed to make the effort to see G.M.T. at Christmas, failed to provide her with any gifts, and instead, contacted G.M.T.'s mother indicating for a third time his interest in voluntarily relinquishing his parental right to G.M.T.

As Mr. T has failed to act affirmatively to maintain a relationship with his minor daughter, involuntary termination is warranted. Here, the conduct of Mr. T does not rise to the level of reasonable firmness. The evidence presented in this case shows no adequate excuse for the failure of Mr. T to maintain contact with G.M.T. during the six months at issue.

The court must all consider any post-abandonment contact between the parent and the child. In this case, the last visit Mr. T had with G.M.T was his visit of November 28, 2009. Accordingly, he has not seen G.M.T. since the Petition was filed in December of 2009.

The third inquiry to be made by this Court deals with the needs and welfare of G.M.T. 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. Id. at 1249.

Although Mr. T has demonstrated a casual relationship with G.M.T., he has not demonstrated any real commitment to actual parenting, and accordingly, no **parental** bond has been established. Mr. T has done little to even justify being an Uncle. According to Mr. Meacham, a psychologist with expertise in child custody and welfare issues, children bond with their primary caregivers, those who meet their basic needs. As Mr. T has only spent a minimal amount of time with G.M.T. since the parties separation in 2005, Mr. T has not established himself as a predictable presence in G.M.T.’s life. In fact, Mr. Meacham testified that virtually no relationship

flows from the type of contact G.M.T. has had with Mr. T throughout her young childhood.

The evidence does not indicate that any psychological impact upon G.M.T. will result from a permanent separation from Mr. T. According to Mr. Meacham, there is no risk of harm associated with G.M.T. not seeing Mr. T, and in fact, emotional risks are increased only by exposure to Mr. T. Evidence established that G.M.T. was often unwilling to speak to Mr. T on the phone, and G.M.T.'s sporadic contact with Mr. T was upsetting and stressful to her. Most troublesome to Mr. Meacham was Mr. T's continued use of alcohol and failure to attend recovery meetings on a regular basis pursuant to Mr. T's long established history of insobriety. As Mr. T was not present during G.M.T.'s formative years, re-introduction into G.M.T.'s life is already difficult. According to Mr. Meacham, a re-unification process which is not predictable, or does not end well could negatively impact G.M.T., and result in increased anguish. According to Mr. Meacham, Mr. T's continued use of alcohol presents a high risk factor that does not bode well for Mr. T to be able to play a predictable role in G.M.T.'s life. This Court finds the testimony of Mr. Meacham to be credible.

Mr. Meacham testified that in contrast to the lack of bond exhibited with Mr. T, G.M.T. has formed a strong parental bond with her step-father, Jason R, who has functioned in all respects as G.M.T.'s parent since 2008. Mr. R has provided financial, physical and emotional support to G.M.T. Mr. R has been a consistent, permanent fixture in G.M.T.'s young life. Termination of the parental rights of Brent T will permit Jason R to adopt G.M.T., 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 G.M.T., is one of the goals of the termination statute. G.M.T. needs and deserves a father who is committed to fulfilling all of the duties of a parent. Mr. R 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 G.M.T. See 23 Pa.C.S.A. § 2511(b).

BY THE COURT,

Richard A. Gray, J.

cc: Mark L. Taylor, Esquire

Trisha Hoover, Esquire