

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF: : NO. DP – 33 – 2009
M.J.K. : CHILDREN & YOUTH
: :
: NO. 6217
: ADOPTION

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IN THE INTEREST OF: : NO. DP – 34 – 2009
J.M.F. : CHILDREN & YOUTH
: :
: NO. 6241
: ADOPTION

OPINION

Before the Court are Petitions for the Termination of D.K.’ Parental Rights filed by the Lycoming County Department of Children and Youth (hereinafter referred to as Agency) in the interest of two children, namely: M.J.K., age 6, date of birth 3/14/04, and J.M.F., age 2, date of birth 11/25/08. A hearing on the petitions was held December 2, 2010.

FINDINGS OF FACT

1. The mother of M.K. is J.L.F.. J. is 36 years of age and is currently incarcerated. She signed a voluntary consent to adoption on April 21, 2010.
2. The mother of J.F. is T.F.. T. is 17 years of age. She signed a voluntary consent to adoption on September 15, 2010.
3. The father of both children is D.K. (hereinafter referred to as Father). He

is 28 years of age and is currently incarcerated.

4. T.F. is the daughter of J. F. T. lived with her grandmother until the age of 12 or 13, at which time she began living with her mother, J. F., and Father. M., who was born in March 2004, also resided in the household.
5. Soon after T. moved into the household, Father began sexually abusing her and such continued for several years. J. was conceived as a result of the abuse and was born in November 2008.
6. On July 17, 2009, the Agency received a report of the sexual abuse; Father was named perpetrator by commission and J. was named perpetrator by omission.
7. On July 23, 2009, Father was arrested on charges related to the sexual abuse and was incarcerated in the Lycoming County Prison. He was later released on bail.
8. On August 3, 2009, new allegations against J. F. resulted in her being named perpetrator by commission with respect to the previous charges; she was arrested on August 4, 2009, and incarcerated at the Lycoming County Prison.
9. On August 4, 2009, both J. and M. were voluntarily placed by their respective mothers into Agency custody; both children were placed into the resource home of S. and E. R.. Both children remain in that home at this time.
10. In September 2009, Father was re-incarcerated and remains at the Lycoming County Prison at this time.
11. On July 12, 2010, Father pled guilty to statutory sexual assault, involuntary deviate sexual intercourse, and aggravated indecent assault.

The terms of the plea agreement include a ten to twenty-year state sentence. Sentencing is currently scheduled for December 22, 2010.

12. Father visited the children weekly from the time of their placement until he was incarcerated in September 2009. He has not visited with the children since September 2009.
13. Father has written letters to the children and sent them cards.
14. Both children are healthy and developing normally. M. is in first grade and is doing well both academically and socially. J. is in daycare and has adjusted well to that setting.
15. Both children have acclimated to the R. home and have bonded with Mr. and Mrs. R. and their extended family.
16. J. has no bond with Father and, in fact, has no concept of him.
17. M. has minimal emotional connection with Father and very rarely speaks of him; he has expressed a desire to be adopted by the R.'s.
18. The R.'s have expressed a desire to adopt both children and all service providers involved recommend such adoption as in the children's best interests.

DISCUSSION

The Agency seeks termination of the parental rights of D.K. to M.K. and J.F. pursuant to 23 Pa.C.S. Sections 2511(a)(1), (2), (5), and (8), 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.
- (2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.
- (5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.
- (8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

With respect to J.F., the Agency also asserts as grounds for termination Sections (a)(3) and (7), as follows:

- (3) The parent is the presumptive but not the natural father of the child.
- (7) The parent is the father of a child conceived as a result of rape

or incest.

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 with respect to both children is appropriate under subsection (a)(8), as the children have been in foster care since August 2009, the conditions which led to their placement continue to exist, and termination of parental rights would best serve their needs and welfare.

As noted above, the children were placed when J. F. became incarcerated in August 2009 and, because of the nature of the charges against Father, the children were considered dependent if left in Father's care. Both mothers have voluntarily given up their parental rights to the children and Father remains incarcerated and will continue to be incarcerated for at least ten, and possibly twenty, years. Thus, the children have been in placement for at least twelve months and the conditions which led to their placement continue to exist.¹

¹ In light of Father's lengthy incarceration, the Court finds it unnecessary to discuss the ramifications of the sexual abuse.

With respect to whether termination would best serve the children's needs and welfare, the Court notes the lack of a bond between Father and the children, the strong bond formed with the foster parents (who plan to adopt), and the dismal prospects for any relationship between Father and the children over the next ten to twenty years. While Father believes the children should wait for him to be released from prison, indicating that in the meantime he will write to them, consideration of their developmental, physical and emotional needs and welfare requires that they be provided with full-time parents and a full-time family. Indeed, in In re C.L.G., 956 A.2d 999, 1006 (Pa. Super. 2008)(quoting In re N.M.B., 856 A.2d 847, 856 (Pa. Super. 2004)), the Superior Court noted that in cases involving an incarcerated parent, "a parent's basic constitutional right to the custody and rearing of his child is converted, upon the failure to fulfill parental duties, to the child's right to have proper parenting and fulfillment of his or her potential in a permanent, healthy, safe environment." Thus, while the Court agrees with Father that incarceration alone cannot serve as the sole basis for termination, considering the complete lack of a relationship between Father and the children at this time, and the miniscule chance for the development of a relationship while Father remains incarcerated over the next ten to twenty years, the Court finds the children's developmental, physical and emotional needs will be best served by termination.

CONCLUSIONS OF LAW

1. The Court finds that the Agency has established by clear and convincing evidence that Father's parental rights should be involuntarily terminated

under 23 Pa.C.S. Section 2511 (a)(8).

2. The Court finds that the Agency has established by clear and convincing evidence that the children's developmental, physical and emotional needs will be best served by termination.

Accordingly, the Court will enter the attached decrees.

By The Court,

Dudley N. Anderson, Judge

cc: Children & Youth
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