

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF S.J. : No. 6227
:
(Appeal of J.D.) :
: 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Order dated August 20, 2010, which terminated the parental rights of natural father, J.D.

Procedural Background

On June 17, 2010, natural Mother R.O. (“Mother”) filed a petition to involuntarily terminate the parental rights of J.D. (“Father”), along with a petition for her husband M.O. (“Step-Father”) to adopt her child, S.J. A hearing was held on August 20, 2010. Mother and Step-Father testified at the hearing. At the conclusion of the hearing, the Court granted the petition to terminate Father’s parental rights.

On September 15, 2010, Father filed a notice of appeal. Father raised two issues on appeal: (1) the trial court erred in terminating his rights because the clear and convincing evidence standard was not established; and (2) the trial court erred in concluding that no bond existed between the child and Father.

Facts

S.J. was born on March 3, 2003. S.J. has lived with Mother her entire life, except for four months approximately four years ago when Mother was having some housing issues. During that four month period, Father took S.J. out of state and gave her to one of his

family members. Since August 2007, Father has not had any contact whatsoever with S.J. He has not called, sent any cards or gifts, or made any effort to contact S.J.

S.J. doesn't think of Father as her dad or call him dad; she calls him "Mr. Meanie." She is attending counseling for nightmares and mood swings from Father taking her out of state.

S.J. considers Step-Father her daddy. They are very close. They watch sports and movies together, and play games. S.J. loves to help Step-Father with gardening and other outdoor activities, and Step-Father taught S.J. how to swim. When the family drives by the courthouse, S.J. comments that they need to go there and make Step-Father her real daddy. Step-Father loves S.J. and can't imagine his life without her.

Discussion

23 Pa.C.S.A. §2511 sets forth the grounds for involuntary termination.

Paragraph (a)(1) states:

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.

23 Pa.C.S.A. §2511(a)(1).

The Court found that Mother and Step-Father presented clear and convincing evidence that Father has failed or refused to perform parental duties for at least six months immediately preceding the filing of the petition. "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 the precise facts in issue.'" In re J.M.M., 782 A.2d 1024, 1030 (Pa. Super. 2001), quoting In re C.S.,

761 A.2d 1197, 1201 (Pa. Super. 2000)(citation omitted). The Court did not hesitate one iota in making that finding. The evidence clearly established that Father has had absolutely no contact with S.J. since August 2007. He has not paid any money towards her support. He has not called her on the telephone. He has not sent any cards, letters or gifts.

The Court also found that terminating Father's parental rights was in the best interest of S.J. See 23 Pa.C.S.A. §2511(b) ("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"). There is no bond between S.J. and Father. S.J. is only seven years old, and Father has not had **any** contact with her for at least three years. The Court cannot fathom how Father can argue that the evidence failed to establish a lack of a bond when Father has been completely absent for almost half of S.J.'s young life. S.J. considers Step-Father to be her daddy. They have a loving, parent-child relationship. S.J. wants to be adopted by Step-Father. Clearly, it is in S.J.'s best interest for Father's rights to be terminated and for her to be adopted by Step-Father, as he is the one who, through his love and support, has been the real father figure in S.J.'s life.

Based on the evidence presented at the hearing on August 20, 2010, the Court does not believe its factual findings or legal conclusions were in error. Instead, it is Father's claims that are not supported by the record.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Joel McDermott, Esquire

Kirsten A. Gardner, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)