

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: ADOPTION OF: : ORPHAN'S COURT
E.W., :
A MINOR CHILD : NO. 6278

OPINION AND ORDER

Before the Court is a Motion to Dismiss filed by J.W., natural father of E.W.

By way of background, a Petition for Involuntary Termination of Parental Rights and Adoption was filed by the child's natural mother along with her present husband. The Petition was filed on July 13, 2011. Father filed an Answer to the Petition denying that the termination of his parental rights was appropriate or should be granted.

Among other things, father asserted that he has not evidenced a settled purpose of relinquishing his parental rights within the last six (6) months and that in fact he has tried on many occasions in the last year to have a relationship with his child and filed a Complaint for Partial Custody on June 10, 2011. (Answer, Paragraph 7.A.).

In his Motion to Dismiss, father asserts that he is entitled to a dismissal of the Petition for Involuntary Termination of his Parental Rights as the statutory requirements of 23 Pa. C.S.A. § 2511 (a) (1) have not been met. More specifically, father contends that because he filed a Custody Complaint on July 10, 2011 which was within six (6) months of the filing of the Petition for Involuntary Termination which was filed on July 13, 2011, the Petition to Terminate should be dismissed.

An argument was held on father's Motion to Dismiss on September 23, 2011.

Father, however, is only partially correct in his analysis of § 2511 (a) (1). To

satisfy that section, the party seeking involuntary termination must produce sufficient proof that the respondent engaged in conduct sustained for at least the six months prior to the filing of the Termination Petition which revealed a settled intent to relinquish the parental claim to a child, or a refusal or failure to perform parental duties. 23 Pa. C.S.A. § 2511; In Re: Adoption of Charles E.D.M. and Ashley M., 550 Pa. 595, 708 A.2d 88 (1990).

The applicable section does not require that a parent demonstrate both a settled purpose of relinquishing a parental claim to a child and refusal or failure to perform parental duties. Id. at 602, 708 A.2d at 91, citing Baby Boy A. v. Catholic Social Services, 512 Pa. 517, 521-522, 517 A.2d 1244, 1246 (1986).

While the filing of a Custody Complaint defeats a claim that the party demonstrated a settled purpose of relinquishing his or her parental claim, it does not defeat a claim that the parent failed to perform parental duties.

Indeed, the trial court is required to consider all of the circumstances in determining whether the parent has complied with his or her affirmative obligations to provide among other things, love, support and guidance, as well as to maintain the parent-child relationship to the best of his or her abilities. In re: G.P. – R., 851 A.2d 967, 976-977 (Pa. Super, 2004); In Re: V.E., Pa. Super. 68, 611 A.2d 1267 (1992).

ORDER

AND NOW, this 4th day of October 2011 following a hearing and argument, the Court DENIES father's Motion to Dismiss the Petition for Involuntary Termination of Parental Rights. A hearing in this matter is scheduled for **November 29, 2011 beginning at 9:00 a.m. in Courtroom No. 4** of the Lycoming County Courthouse.

By The Court,

Marc F. Lovecchio, Judge

cc: Court Administrator
Janice Ramin Yaw, Esquire
Bradley Hillman, Esquire
Gary Weber, Lycoming County Reporter