

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE :
TJ, : **NO. 6257**
A MINOR CHILD :

DATE: August 10, 2011

OPINION AND ORDER

This opinion is written in response to a hearing held on June 22, 2011, in regards to Lycoming Children and Youth Services' (Agency) Petition for Involuntary Termination of Parental Rights of RJ, III (Father) and TM (Mother), for minor child TJ filed on March 16, 2011. At which time the Agency was present with counsel Mark Taylor, Esquire, Father was present with his counsel Kirsten Gardner, Esquire, Guardian Ad Litem John Pietrovito, Esquire was present for the child and Mother's counsel James Protasio, Esquire was present. Mother was not present. At the request of the Court the attorneys were requested to submit briefs to the Court. The Petitioners allege that since the child has been in a resource home continuously for over eighteen months with no reasonable prospect for the children to return home, it is in the her best interest that the Court terminate Mother's and Father's parental rights.

TJ was born on November 17, 2009. The Agency obtained custody of the child on January 4, 2010 when Mother signed a Voluntary Placement Agreement; at the time Father was incarcerated. On January 28, 2010 the child was placed in the resource home of SD and AD. The child is doing well in the resource home. While in resource care both parents have visited the child. Father began visiting in May 2010 while in the pre-release center. At the beginning Father's visitation schedule was every other week for 2 hours, in September 2010 visitation was increased to weekly 3 hour visits. Father visits regularly and travels by bus from Harrisburg, PA

to Williamsport, PA for the visits. At the visits Father changes diapers, feeds, plays and colors with the child; he accepts advice and guidance from the staff; and frequently rocks the child to sleep then naps with the child. Father testified that the visits have been going well and that the child calls him “dad”. Father has also attended doctor appointments with the child. Father testified that he loves his daughter and wants to have custody of his daughter. Father stated that he has placed a crib and other necessities on layaway to prepare for reunification with his daughter.

At the hearing the Agency presented testimony from KM the assigned case worker. She testified that she was unsuccessful at all attempts to make contact with Mother. She further testified that she has had meetings with Father. KM reviewed the Family Service Plan Goals for Father they were 1) gain independent housing; 2) find employment; 3) attend anger management classes; 4) undergo drug and alcohol evaluation; 5) attend parenting classes and obtain parenting services; 6) attend the visitations with his daughter; and 7) cooperate with Probation and Parole. Father testified that he has not yet obtained independent housing, he is living with his mother for financial reasons. He also has not found full-time employment but has been working as needed through a temporary placement agency. Father has successfully completed anger management classes and parenting classes; however KM has recommended further parenting classes. Father has been attending his scheduled visitations but has missed some visits. Father stated that he had problems completing the drug and alcohol evaluation because he was without insurance and lacked the funds necessary to pay for the program. As a result of the failure to get a drug and alcohol evaluation Father was incarcerated for a parole violation as a drug and alcohol evaluation is also a condition of his parole. Other than that occurrence Father has been in compliance with Probation and Parole.

Mother has visited however visits were not successful; she lacks empathy, does not accept advice from staff, and does not cope well with the child crying. In addition, Mother's attendance has been poor; out of 103 scheduled visits Mother has only attended 33. Of the remaining visits 57 of them were no shows and 13 of them were cancellations. At the last visit the child did not know who the Mother was. Mother's visitation schedule has been scaled back due to lack of visiting. As stated above testimony was heard from the caseworker, KM, she stated that she was not successful in attempts to contact Mother. In addition, Mother was not present at the hearing.

Outreach services that were not offered to Father, who is a Dauphin County resident. Outreach services were offered Mother because she is a Lycoming County resident. Mother's outreach worker RS testified to the fact that she worked with Mother on obtaining employment, baby basics, anger management training, and obtaining independent housing. RS stated that Mother's employment was on and off; she did complete both baby basics and anger management classes; but failed to secure independent housing. Mother regularly missed appointments and was not in compliance with the meetings for nine months and therefore her case was closed on March 22, 2011. KM also testified that to the best of her knowledge Mother still had not obtained independent housing.

Testimony of psychologist BA was presented by the Agency. BA testified that the child was developmentally a normal and healthy child. While he did not get to observe either Mother or Father with child he testified that Mother and child had no bond and Father and child had very little to no bond on the side of the child and that Father was bonded. BA stated that he does feel that Father loves the child. BA also explained that it is hard to build a bond when the frequency of visits is only once a week for a few hours. BA did observe the child with the resource parents

and he stated that there was definitely a bond there. He explained the bond by stating that at such a young age a child bonds with the primary caregiver, in this case the primary caregivers are the resource parents.

The Court is vested with the power to terminate parental rights. 23 Pa.C.S.A. § 2511(a) provides that the rights of a parent in regards to a child may be terminated by any of the following:

- (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.
- (3) The parent is the presumptive but not the natural father of the child.
- (4) The child is in the custody of an agency, having been found under such circumstances that the identity or whereabouts of the parent is unknown and cannot be ascertained by diligent search and the parent does not claim the child within three months after the child is found.
- (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.
- (6) In the case of a newborn child, the parent knows or has reason to know of the child's birth, does not reside with the child, has not married the child's other parent, has failed for a period of four months immediately preceding the filing of the petition to make reasonable efforts to maintain substantial and continuing contact with the child and has failed during the same four-month period to provide substantial financial support for the child.

- (7) The parent is the father of a child conceived as a result of a rape or incest.
- (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.
- (9) The parent has been convicted of one of the following in which the victim was a child of the parent:
- (i) an offense under 18 Pa.C.S. Ch. 25 (relating to criminal homicide);
 - (ii) a felony under 18 Pa.C.S. § 2702 (relating to aggravated assault);
 - (iii) an offense in another jurisdiction equivalent to an offense in subparagraph (i) or (ii); or
 - (iv) an attempt, solicitation or conspiracy to commit an offense in subparagraph (i), (ii) or (iii).

23 Pa.C.S.A. § 2511(b) provides:

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.

In order to involuntarily terminate parental rights, the party seeking termination must prove by clear and convincing evidence the grounds for termination. *Santosky v. Kramer*, 455 U.S. 745 (1982); *In re Adoption of J.D.P.*, 471 A.2d 894, 895, (Pa. Super. Ct. 1984). According to the Pennsylvania Supreme Court:

[o]nce the evidence establishes a failure to perform parental duties or a settled purpose of relinquishing parental rights, the court must 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 of parental rights on the child pursuant to Section 2511(b).

In re Adoption of Charles E.D.M., 708 A.2d 88, 92 (Pa. 1998). In an involuntary termination proceeding, the focus is on the conduct of the parents. *In re B.L.W.*, 843 A.2d 380, 383 (Pa. Super. Ct. 2004). Most importantly, “however, is that adequate consideration be given to the needs and welfare of the child.” *In re I.A.C.*, 897 A.2d 1200, 1204 (Pa. Super. Ct. 2006) (citing *In re J.I.R.*, 808 A.2d 934, 937 (Pa. Super. Ct. 2002), appeal denied, 821 A.2d 587 (2003). “In evaluating the needs and welfare of the child, the trial court must consider ‘whatever bonds may exist between the children and the [parent], as well as the emotional effect that termination will have upon the children.’” *In re I.A.C.*, 897 A.2d 1200, 1204 (Pa. Super. Ct. 2006) (quoting *In re Adoption of A.C.H.*, 803 A.2d 224, 229 (Pa. Super. Ct. 2002)). The Pennsylvania Superior Court has determined that

The bonding cannot be in one direction only -- that of child to the parent - but must exhibit a bilateral relationship which emanates from the parents' willingness to learn appropriate parenting . . . [and] drug rehabilitation It is inconceivable that a child's bonding to the parent, if it can be documented, will supervene failure to thrive, . . . neglect, domestic violence reports and removal of the children into foster care due to adjudications of dependency and termination findings

In re Involuntary Termination of C.W.S.M., 839 A.2d 410, 419 (Pa. Super. Ct. 2003).

Finally, “[t]he justification behind termination of parental rights is to prevent children from growing up in an indefinite state of limbo, without parents capable of caring for them, and at the same time unavailable for adoption by loving and willing foster families....” *In re C.T.*, 944 A.2d 779, 782 (Pa. Super. Ct. 2008) (quoting *In re H.S.W.C.-B.*, 836 A.2d 908, 910-11 (Pa. 2003).

The Agency seeks to the termination of parental rights pursuant to 23 Pa. C.S. § 2511 (a)(1), (2), (5), and (8). By Mother's lack of involvement; refusal or inability to take guidance from others in regards to the care of her child; lack of presence at the hearing; and continued missed and cancelled visits to the point of the visitation schedule being reduced because of lack of interest in the eyes of the Court, it is evident that Mother is not invested in having a continuing relationship with her child. This finding was made without regard to the fact that the child is in resource care due to Mother signing a Voluntary Placement Agreement in the first place. Mother has not shown in any way that she is either capable or willing to care for her daughter. The Court finds that by clear and convincing evidence the Agency has fulfilled 23 Pa. C.S. § 2511 (a)(1) by conduct continuing for at least six months preceding the petition Mother has evidenced a settled purpose of relinquishing parental rights and (a)(2) Mother has evidenced an incapacity and or refusal to provide the child with the essential care. Mother by failing to appear further failed to refute 23 Pa. C.S. § 2511 (a)(5) and (8). There was testimony that to the Agency's knowledge Mother did not have employment or adequate housing.

When arguing that Father's parental rights should be terminated the Agency points to the facts that Father lacks independent housing, that he has not obtained full-time employment, that he failed to attend ordered drug and alcohol evaluations, and that during visits guidance and input is still given to him. 23 Pa. C.S. § 2511 (b) states: “. . . 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. . . .” The Court finds that Father has made efforts to find employment and he is on a list at the temporary placement agency for work. Father's lack of independent housing is due to the fact that he cannot afford it due to the fact that he is not working full-time. This situation is out of the

Father's control because he is putting in an effort. Relying on 23 Pa. C.S. § 2511 (b) the Court finds that Father's parental rights cannot be terminated based on lack of independent housing and employment because he is putting forth an asserted effort.

The Court further finds that the Agency has not met their burden in regards to 23 Pa. C. S. 2511 (a)(1). Father by his conduct has not evidenced that he was willing to relinquish his parental claim. He attends visits, which he gets to by bus from Harrisburg, PA to Williamsport, Pa, attends doctors appointments and has been trying to meet the goals of the Family Service Plan. Father has not shown a repeated or continued incapacity or refusal to provide the child with essential care. While Father still is given input during visitations, it was not testified to that he is asking for guidance. BA testified that parenting does not come natural to a 20-year old male. Father did attend parenting classes, has improved and is trying. With increased visits and time together Father will continue to improve. As for 23 Pa. C.S. § 2511 (a)(5) and (8) the conditions that led to placement of the child are no longer in existence for Father. At the time Mother voluntarily placed the child Father was incarcerated. Father is no longer incarcerated. Further, the Pennsylvania Superior Court has held that "incarceration alone does not provide sufficient grounds for the termination of parental rights." *In re K.J.*, 936 A.2d 1128, 1133 (Pa. Super. Ct. 2007) (citing *In the Interest of C.S.*, 761 A.2d 1197 (Pa. Super. Ct. 2000)). During the hearing, Father testified that he loved his daughter, he wants his daughter to live with him and he has also put a crib and other necessities for her on layaway in order to prepare for her arrival. Father is bonded with the child, the child has bonded with the Father to some degree and that bond, based on BA stating that children bond to caregivers, will grow as Father spends more time with the child. The Agency has not met its burden by clear and convincing evidence that Father's parental rights should be terminated.

The question then becomes does the Court have the authority to terminate one parent's parental rights while maintaining the parental rights of the other. The Court interprets 23 Pa. C.S. § 2511 (a) which states "[t]he rights of a parent . . ." as meaning that the Court can in fact terminate the parental rights of one parent and maintain the rights of the other parent. In *In Re Involuntary Termination of Parental Rights of Shannon Coleen Burns and Kelly Taylor* Mother appealed the termination of her parental rights based on the fact that Father's rights had not been terminated. 379 A.2d 535, 541 (Pa. 1977). The court held that ". . . the rights of the respective natural parents must be determined independently." *Id.* In the present case the Court has looked at the Mother and Father independently and has found that while the Agency has met its burden as to the Mother it has not met the burden as to Father. Furthermore, the Court has the authority to terminate the parental rights of Mother while maintaining the parental rights of Father.

AND NOW, this 20th day of July 2011, the petition for involuntary termination of parental rights of Mother is hereby GRANTED. It is ORDERED and DIRECTED that the parental rights of TM with regards to TJ are hereby terminated now and forever.

The petition for involuntary termination of parental rights of Father, RJ, III is hereby DENIED.

By the Court,

Joy Reynolds McCoy, Judge