

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA
ORPHANS' COURT DIVISION**

IN RE: : **NO. 6303**
 :
AGJ, :
 :
a minor child, :

OPINION AND ORDER

AND NOW, this 14th day of **June, 2012**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, CL.J.B in regard to the rights of her child, AGJ, on January 7, 2012. Mother seeks to terminate the parental rights of the child's biological father, JK, as a prerequisite to having the child adopted by her husband, GB. A hearing on the Petition was held on May 14, 2012.

Finding of Facts

1. AGJ was born on January 1, 2009, in Williamsport, Lycoming County, Pennsylvania. She currently resides with her mother, CL.J.B and step-father, GB, at _____, Jersey Shore, Lycoming County, Pennsylvania. The child's mother is CL.J.B who was born on April 20, 1984. She is currently married to GB who was born on December 30, 1985. GB and CL.J.B were married in September, 2010.
2. The child's father is JK. Father resides at _____ Morton, Tazewell County, Illinois. Mother and Father met while they were in college at Lincoln Christian College in Lincoln, Illinois.
3. Mother became pregnant in April, 2008.

4. Upon learning of Mother's pregnancy, Father and his family provided Mother with assistance in locating a place to live and obtaining a vehicle.

5. Father attended pre-natal appointments with Mother while she lived in Illinois.

6. The majority of Father's family resides in Illinois.

7. The majority of Mother's family resides in Pennsylvania.

8. In November, 2008, seven months into her pregnancy, Mother moved back to Pennsylvania to be near family and friends.

9. Mother advised Father one to two weeks prior to returning to Pennsylvania that she was leaving Illinois and returning to Pennsylvania.

10. Mother returned to Pennsylvania because she felt alone in Illinois, lacked communication with Father, felt that there was no partnership between her and Father and that Father was not supportive of her.

11. On December 31, 2008, Mother contacted Father to let him know that she had gone into labor.

12. Within a few hours of receiving the call that Mother had gone into labor, Father, his mother and sister left Illinois and drove through the night to arrive in Pennsylvania.

13. AGJ was born on January 1, 2009.

14. Father is not on the child's birth certificate.

15. Father remained in Pennsylvania for two to three days while Mother and the child were in the hospital.

16. In February, 2009, Mother went to Illinois with the child. During this visit, she stayed with Father's parents where Father was also residing. Mother and child stayed in Illinois for approximately one week at which time Father spent time with the child.

17. Father's family helped purchase the plane ticket for Mother to bring the child to Illinois for the visit.

18. In February, 2009, the parents reached an agreement through Father's church that Mother would have custody of the child and Father would help support the child financially, and Mother and Father would work on their relationship.

19. In May, 2009, Mother made another trip to Illinois to attend her brother's graduation. Father saw the child during this visit.

20. During the Summer of 2009, Father and his mother came to Pennsylvania to see the child. They were in Pennsylvania from Thursday to Sunday and during that time, spent time with the child.

21. In October, 2009, Mother went to Illinois to visit with her brother. During this visit, Father saw the child.

22. In January, 2010, Mother and Father had a conversation where they agreed that a relationship between them was not going to work out. Mother advised Father it was his job to maintain contact with the child.

23. During the Spring of 2010, Father came to Pennsylvania to visit. He was in Pennsylvania for approximately a week and, during this visit, interacted well with the child and played with her.

24. Sometime in June, 2010, Father requested to come to Pennsylvania during the Fourth of July holiday to spend time with the child. Mother indicated to Father at that time, she already had previous plans, but would attempt to accommodate Father seeing the child during his visit. Father did not ultimately come to Pennsylvania during the Fourth of July holiday 2010.

25. On July 2, 2010, Father filed custody papers in Illinois to establish contact with the child. In October, 2010, a hearing was held in Illinois wherein the Court established Father as the legal father of the child. The Illinois Court ruled that jurisdiction of the custody matter shall occur in Pennsylvania.

26. At no time did Father file any type of custody documents in Pennsylvania.

27. There was very little contact by Father with Mother between his visit in May, 2010, and the visit in February, 2011.

28. In February, 2011, Father, his mother and Father's fiancé came to Pennsylvania to visit with the child. They were in Pennsylvania from Thursday through Sunday. During this visit, Father spent time with the child in Mother's home and played with child.

29. During this visit, Father discussed with Mother's husband his desire to resolve custody out of court. Father contacted one mediator in Illinois and decided that he did not want to work with that individual. Father took no steps after this conversation to contact another mediator or set up mediation or other mechanism to resolve custody out of Court.

30. During Father's visits to Pennsylvania, Father was required to visit with the child in Mother's home with Mother or her husband present.

31. The visits in Mother's home with the child were not the most comfortable situation for Father. Father acknowledged that the situation was comfortable for the child.

32. Mother had no contact from Father from February, 2011, through the date of filing of the Petition to Involuntarily Terminate Father's Rights on January 27, 2012. Father has not sent any cards or gifts or inquired as to the child's well-being during this time.

33. Father did not send cards or gifts to the child because he felt he would be sending them to Mother.

34. Mother has no idea why Father stopped visiting and having contact with the child or her in February, 2011.

35. Father contacted an attorney in Pennsylvania in February, 2011, to discuss custody.

36. Father knew as of February, 2011, that he could file a custody action in Pennsylvania to get Court-ordered periods of time with the child.

37. Mother did move from her prior residence to a new residence in June, 2011; however, Mother has maintained the same phone number during this entire time.

38. Father knows how to contact Mother's parents in Pennsylvania. Father had no contact with Mother's parents.

39. From the time of the child's birth, Father has been a full-time student and/or employed.

40. Father lost his job in October, 2011, and had no income. Father regained employment in February, 2012.

41. Father provided sporadic support for the child during the first year of her life. Father has provided no support since late 2009.

42. AGJ refers to GB as Dad.

43. AGJ knows Father as John.

44. The driving distance between Father's home in Illinois and Mother's home in Pennsylvania is approximately 13 ½ hours.

45. Father's intention is to become more involved with the child and continue a relationship with the child.

Discussion

Mother argues that the basis for termination in this case may be found in 23 Pa.C.S. §2511(a)(1), which provides 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.

A court may terminate parental rights under Section 2511(a)(1) where a parent demonstrates a settled purpose to relinquish parental claim to a child **or** fails to perform parental duties for at least six months prior to the filing of the termination petition.

In the Interest of C.S., 761 A.2d 1197, 1201 (Pa. Super. 2000). The Court should consider the entire background of the case and not simply:

mechanically apply the six month statutory provision. The court must examine the individual circumstances of each case and consider all explanations offered by the parent facing termination of his . . . parental rights, to determine if the evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination.

In re: B.N.M., 856 A.2d 847, 855 (Pa. Super. 2004), appeal denied, 582 Pa. 718, 872 A.2d 1200 (2005) citing **In re: D.J.S.**, 737 A.2d 283, 286 (Pa. Super. 1999).

In determining what constitutes parental duties, the Pennsylvania Supreme Court has said:

There is no simple or easy definition of parental duties. Parental duty is best understood in relation to the needs of a child. A child needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the child. Thus, this Court has held that the parental obligation is a positive duty which requires affirmative performance. This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child. Because a child needs more than a benefactor, parental duty requires that a parent "exert himself to take and maintain a place of importance in the child's life."

With these principles in mind, the question whether a parent has failed or refused to perform parental duties must be analyzed in relation to the particular circumstances of the case. A finding of abandonment, which has been characterized as "one of the most severe steps the court can take," will not be predicated upon parental conduct which is reasonably explained or which resulted from circumstances beyond the parent's control. It may only result when a parent has failed to utilize all available resources to preserve the parental relationship.

In re: Burns, 379 A.2d 535, 540 (Pa. 1977)(citations omitted).

The Court finds as of the date of the Petition to Involuntary Terminate his parental rights, the Father has failed to perform his parental duties for a period of time in excess of

six (6) months and has evidence of settle purpose of relinquishing his parental claim. Through his own admission, Father admits that he has failed to make any efforts to have contact with his child since February, 2011. Father's reason for not sending his child birthday cards or gifts was due to the fact that he felt he would actually be sending these things to Mother rather than to the child. Not only did Father fail to send cards or gifts to his child, he also failed to have any communication with Mother from February, 2011, until the time of the filing of the Petition. Father did not so much as inquire into how his child was doing or her well-being. Father made no attempt to see the child, nor did he take any actions to obtain Court intervention despite knowing that this remedy was available to him. Father's counsel argues that you cannot look at the six months immediately prior to filing a petition in a vacuum and in light of the geographical distance between Pennsylvania and Illinois, it is unusual to have a six-month period without seeing a child. Father further argued that he had every intention in becoming more involved with his child and continuing a relationship with his child and therefore, he has not shown to settle purpose of relinquishing his parental rights. The Court does not agree. Though the Court acknowledges that there is a significant distance between Pennsylvania and Illinois which would cause a hardship for visits between the Father and child, Father has taken absolutely no steps to have any type of communication or relationship with his child from February, 2011, to the date of the filing of the Petition which is approximately 11 months.

From February, 2011, to the date of the filing of the Petition in January, 2012, almost the entire third year of the child's life, Father has failed to show even a passive

interest in his child. While the Court believes Father's testimony that he had every intent of becoming more involved in his child's life and that it was not his intent to show a settled purpose of relinquishing his parental rights. Father's intent is not sufficient. A parent has an affirmative duty to be part of a child's life.

As the statutory grounds for termination have been met, the Court must also consider the following:

23 Pa.C.S. § 2511(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.

The Court must take into account whether a bond exists between the child and parent, and whether termination would destroy an existing, necessary and beneficial relationship. **In the Interest of C.S.**, *supra*, at 1202. When conducting a bonding analysis, the Court is not required to use expert testimony. **In re: K.K.R.-S.**, 958 A.2d 529, 533 (Pa. Super. 2008) (citing **In re: I.A.C.**, 897 A.2d 1200, 1208-1209 (Pa. Super. 2006)). “Above all else . . . adequate consideration must be given to the needs and welfare of the child.” **In re: J.D.W.M.**, 810 A.2d 688, 690 (citing **In re: Child M.**, 681 A.2d 793 (Pa. Super. 1996), appeal denied, 546 Pa. 674, 686 A.2d 1307 (1996)). A parent's own feelings of love and affection for a child do not prevent termination of parental rights. **In re: L.M.**, 923 A.2d 505, 512 (Pa. Super. 2007).

Before granting a petition to terminate parental rights, it is imperative that a trial court carefully consider the *intangible* dimension of the needs and welfare of a child--the love, comfort, security and closeness--entailed in a parent-child relationship, as well as the tangible dimension. Continuity of relationships is also important to a child, for whom severance of close parental ties is usually extremely painful. The trial court, in considering what situation would best serve the children's needs and welfare, must examine the status of the natural parental bond to consider whether terminating the natural parents' rights would destroy something in existence that is necessary and beneficial.

In the Interest of C.S., supra., at 1202 (citations omitted).

In the present case, Father does not have a bond with the child. The only father that the child knows is GB, her step-father. The last time Father saw the child or had any contact with the child was February, 2011 when she was just two years old. At that time, the child referred to Father as "John". There was no testimony from any party that there was a significant bond demonstrated between Father and the child during the visit in February, 2011. Mother filed her Petition to Involuntarily Terminate Father's Rights approximately one year after Father's last contact with the child. At the child's age, it is doubtful to this Court that she has any recollection of who John is. It is clear that Father has no bond with the child. Further, termination of his rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and the child.

Conclusions of Law

1. The Court finds that CL.J.B has established by clear and convincing evidence that JK' parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that CL.J.B has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of AGJ will best be served by termination of JK' parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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IN RE: : **NO. 6303**
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DECREE

AND NOW, this 14th day of **June, 2012**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JK, held on May 14, 2012, it is hereby **ORDERED** and **DECREED**:

- (1) That the parental rights of JK be, and hereby are, terminated as to the child above-named;
- (2) That the welfare of the child will be promoted by adoption; that all requirements of the Adoption Act have been met; that the child may be the subject of adoption proceedings without any further notice to the natural father.

NOTICE TO NATURAL PARENTS
PENNSYLVANIA ADOPTION MEDICAL HISTORY REGISTRY

This is to inform you about an adoption law provision relating to medical history information. As the birth parent of a Pennsylvania born child who is being, or was ever adopted in the past, you have the opportunity to voluntarily place on file medical history information. The information which you choose to provide could be important to this child's present and future medical care needs.

The law makes it possible for you to file current medical information, but it also allows you to update the information as new medically related information becomes available. Requests to release the information will be honored if the request is submitted by a birth child 18 years of age or older. The law also permits that the court honor requests for information submitted by the adoptive parents or legal guardians of adoptees who are not yet 18 years of age. All information will be maintained and distributed in a manner that fully protects your right to privacy.

You may obtain the appropriate form for you to file medical history information by contacting the Adoption Medical History Registry. Registry staff are available to answer your questions. Please contact them at:

Department of Public Welfare
Adoption Medical History Registry
Hillcrest, Second Floor
P.O. Box 2675
Harrisburg, PA 17105-2675
Telephone: 1-800-227-0225

Medical history information forms may also be obtained locally by contacting one of the following agencies:

1. County Children & Youth Social Service Agency
2. Any private licensed adoption agency
3. Register & Recorder's Office

By the Court,

Joy Reynolds McCoy, Judge