

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

IN RE: : **NO. 6310**
 :
CJG, :
 :
a minor child, :

OPINION AND ORDER

AND NOW, this 29th day of **October, 2012**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, SH in regard to the rights of her child, CJG on March 30, 2012. Mother seeks to terminate the parental rights of the child's biological father, CS, as a prerequisite to having the child adopted by her husband, RH. A hearing on the Petition was held on October 12, 2012. At the time of the hearing, Mother was present with her counsel, Jack Felix, Esquire. Father was present with his counsel, Katy Bellfy, Esquire. The Guardian Ad Litem, Angela Lovecchio, Esquire, was present on behalf of the child.

Finding of Facts

1. CJG was born on June 6, 2006. He currently resides with his mother, SH, step-father, RH, and half-sister EH at 251 North Main Street, Montgomery, Lycoming County, Pennsylvania. SH and RH were married on July 22, 2011.

2. The child's father is CS. Father resides at 152 Boak Avenue, Hughesville, Lycoming County, Pennsylvania. Mother and Father lived together when they were 16 and 17 years old respectively.

3. On May 5, 2006 Mother obtained a temporary Protection from Abuse Order against Father. A final order was entered on June 21, 2006. CJG who was born June 6, 2006 was not a protected party under the order.

4. For the first two months of his son's life Father saw the child once a week.

5. Father then moved to Texas to get his life together. Father was in Texas for approximately two years.

6. While in Texas Father would call occasionally. Father never sent cards, gifts, or money while he was in Texas.

7. In approximately June of 2008 Father moved back to Pennsylvania at that time he contacted Mother about seeing his son. A meeting was arranged and Father was able to see his son at the local fair. The following week Father visited with his son at a local park. A visit for the next week was scheduled but father was unable to attend due to lack of transportation.

8. In November 2008 Father and Mother arranged a visit with the child at the mall. This visit was the last time Father saw his son.

9. In Christmas of 2009 Father sent a present for the child through his family.

10. Approximately in May of 2009, Father's girlfriend at the time contacted Mother to ask about Father seeing the child. Mother then asked the girlfriend if Father could pass a drug test. Nothing came of the phone call.

11. At one point Father contacted Mother via MySpace and mentioned seeing her in court however nothing was ever filed with the court.

12. Mother has kept in contact with Father's family and has allowed them to see the child.

13. CJG refers to RH as Dad.

14. RH dropped out of high school in order to find employment and be able to provide for Mother and child even though he was not the biological father.

15. CJG does not know Father.

16. In July 2011 Father and RH worked together at RWI. RH approached Father about terminating his parental rights to enable RH to adopt the child. Father at first indicated that he would be willing to relinquish his rights and then he changed his mind.

17. Father has never provided any support, parental or financial, to Mother.

18. Father's intention is to become more involved with the child and continue a relationship with the child. He stated that he would like to see the child every other weekend and would help Mother in anyway possible.

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 not seen his child since November 2008; he has not availed himself of the court system in order to be able to see his child; he has not sent cards, or support for the child. Father did send one Christmas gift in 2009. 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 and he was uncertain as to whether the child would receive the items. Not only did Father fail to send cards or gifts to his child after 2009, he also failed to have any communication with Mother. Father did not so much as inquire into how his child was doing or his 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 reasoning for not seeking Court intervention was that he did not want his child to grow up in the Court system. Father's counsel argues Father never intended to relinquish his parental rights even though admittedly he has not seen the child in well over six months. Father's counsel seemed to put the blame on Mother by arguing that Mother did not invite Father to the child's birthday parties. The Court does not agree with Father's argument. Father had the ability and opportunity to see the child. Mother made an effort to make the child available at Father's request. The onus should not be on Mother to act. Father has taken absolutely no steps to have any type of communication

or relationship with his child since their last visit in November of 2008. Even after Father was made aware of the fact that RH wanted to adopt the child Father still made no attempt to see the child or get court intervention.

A parent has an affirmative duty to be part of a child's life and Father has failed to perform his duty.

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 RH, his step-father. The last time Father saw the child or had any contact with the child was November 2008. There was no testimony from any party that there was a significant bond demonstrated between Father and the child during the visit in November, 2008. Mother filed her Petition to Involuntarily Terminate Father's Rights over three years after Father's last contact with the child. 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 SH has established by clear and convincing evidence that CS's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that SH has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of CJG will best be served by termination of CS's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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DECREE

AND NOW, this **29th** day of **October, 2012**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of CS, held on October 12, 2012, it is hereby **ORDERED** and **DECREED**:

- (1) That the parental rights of CS 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 is 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