

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

IN RE: : **NO. 6319**
 :
ZL, :
 :
 a minor child, :

OPINION AND ORDER

AND NOW, this 4th day of **December, 2012**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, TW, in regard to the rights of her child, ZL, on June 13, 2012. Mother seeks to terminate the parental rights of the child's biological father, FL, as a prerequisite to having the child adopted by her husband, GW. A hearing on the Petition was held on December 4, 2012. At the time of the hearing, Mother was present with her counsel, Janice R. Yaw, Esquire. Father was present with his counsel, Kathryn Bellfy, Esquire. The Guardian Ad Litem, Angela Lovecchio, Esquire, was present on behalf of the child.

Finding of Facts

1. ZL was born on June 25, 2003. He currently resides with his Mother, TW and her husband, GW, at 514 Mulberry Street, Montoursville, Lycoming County, Pennsylvania.
2. The child's mother is TW who was born November 22, 1979, in Oceanside, California.
3. Mother married GW on August 4, 2012.
4. The child's father is FL. Father resides at 1923 West Fourth Street, Apt. 1, Williamsport, Lycoming County, Pennsylvania.

5. At the time of ZL's birth on June 25, 2003, Mother and Father were together as a couple.

6. Mother and Father separated at the end of 2004. From the time of the child's birth until the end of 2004, Father saw the child on a regular basis.

7. During the year 2005, Father saw ZL four to six times.

8. On August 25, 2011, Father filed a Custody Complaint to Docket No. 11-21,112 in the Court of Common Pleas of Lycoming County seeking partial custody of his son.

9. From 2006 through August, 2011, Mother received no contact from Father.

10. From 2006 through 2011, Father testified that his only attempt to contact Mother was by messaging her several times on Facebook.

11. A custody conference was held on October 21, 2011, in regard to Father's Complaint for Custody. As a result of the conference, Father was granted periods of custody with the child each Sunday for 2 hours.

12. After the custody Order was entered, Father had two consecutive Sunday visits and then stopped contacting Mother to schedule visits. The last time Father saw the child was November 6, 2011.

13. Father claims that he lost his telephone which contained Mother's phone number and did not have a way to reach Mother to set up visits.

14. Father admitted that he knew where Mother's parents lived, but did not attempt to contact Mother through her parents.

15. Father acknowledged that he knew who Mother's attorney was from the custody conference and did not attempt to contact her to reach Mother.

16. Father admitted that he knew Mother's address as it was stated in his petition.

17. At the time of the custody conference, a follow-up conference was scheduled for January 24, 2012.

18. Father failed to appear at the follow-up custody conference. Review of the Court Custody file shows that Father may not have received notice of the follow-up conference as the Order that was entered scheduling it was sent to an incorrect address and returned.

19. Mother filed her Petition to Involuntarily Terminate Father's Parental Rights on June 13, 2012.

20. During the six months immediately preceding the filing of Mother's Petition, Father had no contact with the child, made no effort to contact the child, did not send the child a Christmas gift, card or any other type of gift. Father did not go to any of the child's events, nor did he go to the child's school to inquire about the child.

21. Father acknowledged on the stand that during the six months immediately preceding the filing of Mother's Petition that he did not make an effort to see his son.

22. When Father was asked why he did not contact Mother's attorney in order to reach Mother, Father stated "why would I go through her for my son".

23. On August 7, 2012, Mother filed a Petition to Stay Father's Visitation. A hearing was held on the Petition on October 2, 2012. Though Father was sent notice of the hearing, he failed to appear at the hearing.

24. Father has provided some financial support for the child over the years. Father's current Court-Ordered child support amount is \$130.00 per month. Father is currently in excess of \$7,000.00 in arrears in child support.

25. When Father was questioned by the Guardian Ad Litem as to why he did not do anything to attempt to see his son after his last visit, Father did not have an answer.

26. GW has been involved in ZL's life since birth.

27. Mother and GW have been together as a couple since ZL was approximately 2 years old.

28. ZL is 9 years of age and in the Fourth Grade.

29. ZL suffers from Down Syndrome and ADHD.

30. ZL refers to GW as Jerry or Dear. When speaking about GW to others, however, ZL refers to him as "dad".

31. When Father had his two visits with ZL in October and November, 2011, Father introduced himself to ZL as Fred.

32. Father's two visits went well.

33. ZL has no idea who his biological father is.

34. Based upon statements by Mother, it is doubtful that ZL would understand the distinction of a biological father.

35. There is absolutely no bond which exists between Father and ZL.

36. ZL is bonded to GW and considers him his father. ZL also considers Mr. Way's parents his grandparents.

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.

Throughout the nine years of the child's life, Father has had little to no involvement with the child. Though Father was involved with the child during the first year or so while he and Mother were still together, his contact with the child dropped off significantly the first year after the parents separated. Father, himself, acknowledged that he only saw the child five or six times. After that, Father stopped having contact altogether. Father attempted to argue to the Court that Mother simply disappeared and he did not know how to reach her. It is clear, however, that Father made little or no effort to locate Mother. Father knew where Mother's parents lived and could have made an effort to reach her through her parents. Father apparently at some point did obtain Mother's address as he filed a Petition for Custody in 2011 wherein he included Mother's address on Mulberry Street in Montoursville.

Despite going through the efforts to seek Court intervention and a Court order for custody, Father failed to follow through with continuing a relationship with the child.

Father had only two visits with the child before he stopped contacting Mother to establish any further visits. Father attempted to blame the fact that he stopped attempting to contact the child on the fact that he had lost his phone which contained Mother's phone number. Father, however, clearly made no effort to attempt to contact Mother. Father knew where Mother lived and simply could have gone to her residence. Father knew who Mother's counsel was and could have contacted the attorney to obtain Mother's phone number. Father simply walked away from contact with the child and he acknowledged that he made no effort to see his child from November, 2011, up through the time Mother filed her Petition in June, 2012, and continuing until the present.

For the majority of the child's life and specifically during the six months immediately prior to filing the Petition, Father has done little to nothing to perform parental duties on behalf of the child. Father has made no effort to see the child and has further made no effort to provide for the child in any manner.

In addition to failing to perform his parental duties, Father has also clearly demonstrated a settled purpose to relinquish his parental claim to his child. Father was appointed counsel by this Court to represent him in the hearing to terminate his parental rights. Father was specifically instructed to contact the appointed counsel at his earliest convenience so that she could prepare for the hearing. Father's counsel stated on the record that the day of the hearing is the first opportunity she had to speak with Father. Father's counsel made several phone calls to him and submitted several letters to him, but Father never bothered to respond to those inquiries. Additionally, the Guardian Ad Litem stated to the Court that she made numerous attempts to contact Father in an attempt to go

to Father's home to meet with him. Father made no effort to meet with the Guardian Ad Litem or speak with her in any detail regarding his case. Clearly, if it were not Father's intent to relinquish his parental rights, he would have taken steps to meet with those individuals who were provided to him to help defend the termination of his parental rights. Father is also very well aware of how to file an action with the Court as he filed the action for custody. During the months leading up to the Petition to Terminate Parental Rights being filed, Father could easily have filed a contempt or modification with the Court to assert his rights to see his child. 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 ZL. Father is clearly a stranger to him. When Father had the opportunity to begin visiting ZL in the Fall of 2011, Father chose to introduce himself to the child as Fred, rather than as the child’s father. ZL views GW as the father-figure in his life and clearly, Mr. Way has fulfilled this duty. Termination of Father’s rights would not destroy an existing and necessary and beneficial relationship as such relationship currently does not exist between Father and ZL.

Conclusions of Law

1. The Court finds that TW has established by clear and convincing evidence that FL’s parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

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

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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IN RE: : **NO. 6319**
 :
ZL, :
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a minor child, :

DECREE

AND NOW, this 4th day of **December, 2012**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of FL, held on December 4, 2012, it is hereby ORDERED and DECREED:

- (1) That the parental rights of FL 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