

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 for Bonding Assessment filed by natural father (hereinafter "Father") on January 31, 2012.

By way of background, a Petition for Involuntary Termination of Parental Rights was filed on July 13, 2011 by the minor child's natural mother (hereinafter "Mother"). A hearing on the Petition for Involuntary Termination was held on December 18, 2011. At the hearing, the parties agreed that it would be bifurcated to the extent that the hearing would only relate to the § 2511 (a) (1), parental conduct issue and not the § 2511 (b), developmental, physical and emotional needs and welfare of the child issue.

By Order of Court dated January 5, 2012, the Court concluded that Petitioner proved by clear and convincing evidence that the father engaged in conduct for at least the six (6) months prior to the filing of the Termination Petition in which he refused or failed to perform his parental duties. The Court further concluded that the father failed to comply with his affirmative obligations to provide to the child, among other things, love, support and

guidance, as well as to maintain the parent/child relationship to the best of his abilities. The Court scheduled a hearing for April 2, 2012 on whether termination of the father's parental rights would best serve the developmental, physical and emotional needs and welfare of the child.

Furthermore, the Court appointed a guardian ad litem but denied Respondent's request for an expert to perform a bonding analysis.

Subsequently, the appointed guardian ad litem requested to be removed due to reasons unrelated to the case. A different guardian ad litem was appointed by Order of Court dated January 20, 2012.

On January 31, 2012, Father filed a Motion for Bonding Assessment. Father submits that because the guardian ad litem has indicated he will not observe Father with the minor child, because Father does not have the money to pay for the expenses of a bonding assessment, and because the Court has not indicated how it will make a determination regarding the bond between Father and the son, a bonding assessment is appropriate.

Arguments on the Motion were held before the Court on March 12, 2012. Father concedes that the guardian ad litem has no responsibility to act as a witness or in fact testify. On the other hand, Father asserts that the Court should order a formal bonding analysis by a qualified expert to be paid by Lycoming County because the circumstances of this case merit such. More

specifically, Father argues that he does not have the funds to pay for an expert, that Mother has improperly distanced the minor child from Father, and that given the time that has elapsed since Father has had an opportunity to be with the minor child, the only appropriate testimony would be expert testimony.

Requests to terminate a biological parent's parental rights are governed by statute. 23 Pa. C.S. § 2511. The test for terminating parental rights consists of two parts. In Re: N.A.M., 33 A.3d 95, 99 (Pa. Super.2011). First, the party seeking termination must prove that the parent's conduct satisfies the statutory ground for termination delineated in § 2511 (a). Id. at 99-100. Second, if the Court determines that the parent's conduct warrants termination, the Court must then engage in a determination of the needs and welfare of the child. Id. at 100, citing In Re: L.M., 923 A.2d 505, 511 (Pa. Super. 2007).

In determining the best needs of the child, the Court must consider intangibles such as love, comfort, security and stability. Id. at 103, citing In Re: C.M.S., 884 A.2d 1284, 1287 (Pa. Super. 2005). Moreover, the Court must "discern the nature and status of the parent/child bond, with utmost attention to the affect on the child of permanently severing that bond." Id.

In analyzing the parent/child bond, however, the Court is not required by statute or case law to order that a formal bonding evaluation be

performed by an expert. In Re: K.K.R. S., 958 A.2d 529 (Pa. Super. 2008).

Contrary to what Father argues, the existence of a bond is not determinative. While the Court must examine the status of the bond to determine whether termination would destroy an existing necessary and beneficial relationship, In Re: Adoption of T.B.B., 835 A.2d 387, 397 (Pa. Super. 2003), the Court must also consider many other factors. In Re: N.A.M., 33 A.3d 95, 103, citing In Re: A.S. 11 A.3d 473, 483 (Pa. Super. 2010).

Father is not precluded from presenting testimony with respect to the bonding issue through witnesses other than experts. Caregivers, family members and friends may all testify. Indeed, Father may testify regarding this issue. Furthermore, Father is not precluded from obtaining an expert to conduct a bonding analysis.

Father's arguments requesting the Court to compel a bonding analysis at the County's cost fail. As stated earlier, a bonding analysis is only one of the factors to be decided by the Court. Moreover, while Father's claim that Mother has disrupted the bond may have some relevance in a bonding determination, the primacy of that issue has previously been addressed when the Court determined that Father failed to perform his parental duties for at least six (6) months prior to the filing of the Termination Petition. Finally, the Court is unwilling to compel the County of Lycoming to pay for an expert in a

case in which Father has retained the services of private counsel. It is not Lycoming County's responsibility to subsidize expert testimony on behalf of litigants.

ORDER

AND NOW, this ____ day of March 2012 following a hearing an argument, the Court **DENIES** Father's Motion to Order a Bonding Assessment to be paid by Lycoming County. Nonetheless, this Order does not preclude Father of retaining the services of an expert to conduct a bonding analysis and as the Court indicated in its January 5, 2012 Order, Mother, all other interested parties and the child must be available for any bonding analysis.

By The Court,

Marc F. Lovecchio, Judge

cc: Janice Ramin Yaw, Esquire
Bradley Hillman, Esquire
John Pietrovito, Esquire
Gary Weber, Lycoming County Reporter