

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

IN RE: : **NO. 6370**
:
TJ, and :
AJ, :
:
minor children, :

OPINION AND ORDER

AND NOW, this 12th day of **August, 2013**, before the Court is Lycoming County Children & Youth Services' ("Agency") Petition for Involuntary Termination of Parental Rights of Father, WJ ("Father"), filed on March 12, 2013 and a Petition to Confirm Mother, KJ's ("Mother") Consent to Adopt filed on May 21, 2013. A Hearing on the Petition to Involuntarily Terminate Father's parental rights was held on June 6, 2013 and June 11, 2013. A Hearing to confirm Mother's Consent to Adopt was held on June 6, 2013. A separate Order has been issued confirming Mother's Consent to Adopt. Charles Greevy, Esquire, Solicitor for the Agency, Jerry Lynch, Esquire, counsel for Mother, Julian Allatt, Esquire, counsel for Father, and John Pietrovito, Esquire, Guardian Ad Litem were present. Mother was present. Father appeared by telephone.

Finding of Facts

TJ was born on December 8, 2005. AJ was born on August 11, 2008. They are the children of KJ and WJ. Mother additionally has two younger children, LB, born June 1, 2010, and IB, born July 18, 2011. AB is the biological father of these two children. A hearing to involuntarily terminate the parental rights of Mother and AB regarding the

termination of the parental rights of LB and IB was held simultaneously with the Petition to Involuntarily Terminate WJ's parental rights to TJ and AJ.

From January, 2009, through December, 2011, the Agency had several contacts with this family for lack of supervision of the children.

On December 13, 2011, the Agency received a report that Mother had left her children with a babysitter with no supplies or diapers until 1:00 a.m. The Agency, thereafter, contacted Mother who indicated she was moving to a residence in another county with her new paramour. The Agency's review of the new residence found it to be inadequate and contained safety issues. Father resides in New York State.

On December 14, 2011, an emergency order was granted placing the children under the protective supervision of Lycoming County Children & Youth Services. On December 15, 2011, a shelter care hearing was held and an order was issued keeping the children in placement pending the dependency hearing.

A Dependency Hearing was held on December 23, 2011. The Court adjudicated the children dependent and placed them under the protective supervision of Lycoming County Children & Youth Services. Both children and their two younger siblings were placed in an Agency improved resource home of the Ys.

A Permanency Review Hearing was held on March 16, 2012. At the time of the hearing, the Court reaffirmed dependency of both children and ordered the children to remain in the legal and physical custody of the Agency in the Y resource home. The Court found that there had been minimal compliance by Father with the Permanency

Plan. The Court noted that Father did not wish to have visits with the children at this time, although he indicated he would like to be considered a resource for the children.

A Permanency Review Hearing was held on June 19, 2012. The Court found that Father had made no effort to visit with the children. The Court further found that Father's sporadic phone calls with the children were not sufficient to maintain a relationship with the children. The Court issued an Order finding aggravated circumstances in regard to Father in that he had failed to maintain substantial and continuing contact with the children for a period of at least six months. The Court, however, ordered the Agency to continue efforts towards reunification. Father was warned by the Court that though an order was entered requiring the Agency to work towards reunification, he must maintain regular visitation with the children and must remain in contact with the Agency and follow through with the Agency's recommendations.

A Permanency Review Hearing was held on September 12, 2012. The Court reaffirmed the dependency of both children and ordered the children to remain in the Y resource home. The Court found that there had been no compliance by Father with the Permanency Plan in that he continues to reside in a residence where the Home Study was denied by New York State. The Home Study was denied due to Father's minimal follow through and due to the fact that the home was not adequate for his children. The Court found that though it was good that Father calls the Agency when he has questions and does call the resource home, the Court continued to express to WJ that his lack of contact with his children was not good for them. The Court advised Father that he was steadily

approaching 15 out of 22 months of the children being in care, which could lead to the Agency filing a petition to involuntarily terminate his parental rights. The Court stressed that it made it hard for Father to have an argument against termination when he has not made any effort to visit with his children despite being given opportunities.

A Permanency Review Hearing was held on January 4, 2013. At the time of the review hearing, the Court reaffirmed the dependency of both children and ordered that the children should continue to remain in the Y resource home. The Court again found that there had been no compliance by Father with the Permanency Plan in that he had no contact with the children during the last review period except for occasional phone calls. The Court also found that there had been no progress by Father toward alleviating the circumstances which necessitated the original placement of the children.

On March 19, 2013, a Permanency Review Hearing was held. The Court again found that there had been no compliance by Father with the Permanency Plan and there had been no progress by Father towards alleviating the circumstances which necessitated the original placement of the children. The Court noted that Father did have some contact with the children by phone and some contact with the Agency during the review period. The Court cautioned Father that his failure to have any contact with both children is a significant issue that may ultimately be brought before the Court at the time of the hearing on the termination of his parental rights which, at that time, had been scheduled. The Court urged Father to do whatever was necessary to speed up the process to make himself available as a care provider for his children or to at least visit with his children as his continued failure to do so may result in his parental rights being terminated.

On April 3, 2013, Mother signed a consent to the voluntary termination of her parental rights of TJ and AJ.

At the time of the hearing on the Petition to Involuntarily Terminate Father's Parental Rights, the Caseworker, CM, testified that the ICPC referral made regarding Father's home located in New York was denied. This occurred due partially to Father's failure to follow through and due to the fact that the home was inadequate for the children. The Caseworker testified that, since the children have been in placement, Father periodically calls the children at the resource home. He also sporadically calls the Caseworker. CM testified that Father continued to indicate to her that he could not be a resource for his children at this time. He did advise her that he was involved in anger management.

Throughout the time that the children have been in care, Father has been provided opportunities by the Agency to travel to Lycoming County from his home in New York in order to see the children. Father has been offered bus tickets from the Agency which would alleviate any financial burden on Father for traveling to Lycoming County. KS, the Visitation Coordinator, encouraged Father to visit his girls. Father advised KS that he did not want to travel in the Winter due to the mountains. At the time of the pre-trial, Father was reluctantly given permission by Judge Richard Gray to appear at the termination hearing by phone. In his Order, Judge Gray stated "...the Court has advised Mr. Allatt (Father's counsel) that it would be in WJ's best interest to appear in person." During the entire time that the children have been in care, Father has failed to, at any point, visit with his children. Father last saw his children prior to December, 2011.

Father did not even attempt to appear in person at the hearing to involuntarily terminate his rights. Additionally, Father did not provide any testimony on his own behalf. Instead, he chose to have his attorney advise the Court that he did not wish his parental rights to be terminated.

Bruce Anderson, Licensed Psychologist, had the opportunity to see the children. He testified that the children have a close bond with the resource mother. He testified that the children need consistency, nurturing and care and that reactive detachment disorder can occur when children do not have this consistency. He further testified that he believed there would be severe trauma to both TJ and AJ if they were to be removed from the resource parent at this time. He also indicated that it would be traumatic for the two sets of siblings to lose each other and would just create another layer of trauma.

Discussion

The Agency argues that the basis for termination in this case may be found in 23 Pa.C.S. §2511(a)(1), (2), (5) and (8), 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.
- (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.
- (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.

- (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.

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). “The standard of clear and convincing evidence is defined as testimony that is so ‘clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts in issue.’” *In re A.S.*, 11 A.3d 473, 477 (Pa. Super. Ct. 2010) (quoting *In re J.L.C. & J.R.C.*, 837 A.2d 1247, 1251 (Pa. Super. Ct. 2003).

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) (emphasis added). 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: N.M.B., 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). "When a child is in foster care, this affirmative duty requires the parent to work towards the return of the child by cooperating with the Agency to obtain rehabilitative services necessary for them to be capable of performing their parental duties and responsibilities." *In re: G.P.R.*, 2004 Pa. Super. 205, 851 A.2d 967, 977.

The Court finds that for a period of at least six months prior to the Agency's filing of the Petition to Involuntarily Terminate Father's Parental Rights, Father has failed to

perform parental duties on behalf of his children. Father has not seen the children since prior to December, 2011. The children have been in the Agency's physical custody since approximately the same time. The only contact Father has had with his children in the past 18 months has been through sporadic phone calls. Father has done absolutely nothing else to perform parental duties on behalf of his children. Father did not even attempt to appear in person to defend against his paternal rights being terminated.

The Court hereby finds by clear and convincing evidence that the Agency has fulfilled the requirements of 23 Pa.C.S.A. §2511(a)(1) and that Father has failed to perform his parental duties for at least six months prior to the filing of the termination petition.

To satisfy the requirements of Section 2511(a)(2), the Agency must demonstrate that the Father through:

- (1) [R]epeated and continued incapacity, abuse, neglect or refusal;
- (2) such incapacity, abuse, neglect or refusal has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being; and
- (3) the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.

In re: Adoption of M.E.P., 825 A.2d 1266, 1272 (Pa. Super. 2003.)

Under Section 2511(a)(2), “[t]he grounds for termination [of parental rights] due to parental incapacity that cannot be remedied are not limited to affirmative misconduct. To the contrary, those grounds may include acts of refusal as well as incapacity to perform parental duties”. ***In re: A.L.D.***, 797 A.2d 326, 337 (Pa. Super. 2002) (citations omitted). “Moreover, an agency is not required to provide services indefinitely if a

parent is either unable or unwilling to apply the instruction given.” *Id.* at 340. “Parents are required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities. ... [A] parent’s vow to cooperate, after a long period of uncooperativeness regarding the necessity or availability of services, may properly be rejected as untimely or disingenuous.” *Id.*, quoting *In re J.W.*, 578 A.2d 952, 959 (Pa. Super. 1990).

Father’s actions exemplify a repeated incapacity and/or refusal to act resulting in the children being without essential parental care, control or subsistence necessary for their physical or mental well-being. Father has failed to do anything to provide parental care, control or substance necessary for his children’s physical or mental well-being. Despite being given opportunities by the Agency to travel, at no cost to him, to Lycoming County to visit his children, Father has failed to ever come to Lycoming County since the children have been put in care to see his children. Both children are of young age and have been in the care of the resource parents for 18 months. The Court finds by clear and convincing evidence that the Agency has fulfilled 23 Pa.C.S. §2511(a)(2) by demonstrating Father’s repeated and continued incapacity, abuse, neglect or refusal and that such incapacity, abuse, neglect or refusal has caused the children to be without essential parental care, control or subsistence necessary for their physical and mental well-being which has not been remedied.

“Termination of parental rights under Section 2511(a)(5) requires that: (1) the child has been removed from parental care for at least six months; (2) the conditions which led to removal and placement of the child continue to exist; and (3) termination of

parental rights would best serve the needs and welfare of the child.” *In re: K.J.*, 936 A.2d 1128, 1134 (Pa. Super. 2007).

Similarly, to terminate parental rights pursuant to 23 Pa.C.S.A. §2511(a)(8), the following factors must be demonstrated: “(1) [t]he child has been removed from parental care for 12 months or more from the date of removal; (2) the conditions which led to the removal or placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child.” *In re: Adoption of M.E.P.*, 825 A.2d 1266, 1275-76 (Pa. Super. 2003); *see also* 23 Pa.C.S.A. §2511(a)(8). “Section 2511(a)(8) sets a 12-month time frame for a parent to remedy the conditions that led to the children’s removal by the court.” *In re: A.R.*, 837 A.2d 560, 564 (Pa. Super. 2003). After the 12-month period has been established, the Court must next determine whether the conditions necessitating placement persist, despite the reasonable good faith efforts that the agency supplied over a realistic time period. *Id.* In terminating parental rights under Section 2511(a)(8), the trial court is not required to evaluate a parent’s current “willingness or ability to remedy the conditions that initially caused placement”. *In re: Adoption of T.B.B.*, 835 A.2d at 396 (Pa. Super. 2003); *In re: Adoption of M.E.P.*, 825 A.2d at 1276.

In the present case, TJ and AJ have been removed from their parental care since December 14, 2011, which at the time of the hearing to terminate Father’s parental rights, was approximately 18 months. TJ has been removed from the care of her Father since she was approximately six (6) years of age. AJ has been removed from the care of her Father since she was approximately three (3) years of age. At the time the children were

removed from their parental care, they were residing with their Mother in Lycoming County, Pennsylvania. Father was residing in New York state. Father has repetitively told the Agency that he cannot be a resource for his children at this time and has failed to exercise any visitation with the children during the entire time they have been placed in care.

The conditions which initially led the children's removal continued to remain in place and Father has done absolutely nothing during the time the children have been in care to attempt to remedy those issues. The Court holds no confidence in Father that he will remedy the issues which brought the children into care and make himself a viable resource for his children. These children deserve permanency in their lives. Terminating Father's parental rights will best serve the needs and welfare of the children. The Court finds by clear and convincing evidence that the Agency has fulfilled 23 Pa.C.S.A. §2511(a)(5) and (8) as the children have been removed from Father's care for 18 months, that the conditions which led to the original removal of the children still continue to exist to date, and that the termination of parental rights would be serve the needs and welfare of the children.

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 represent 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 condition described therein which are first initiated subsequent to the giving of notice of the filing of the petition.”

The Court must also 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 1242. 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. 697, 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 dimensions 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 dimensions. Continuity of a relationship 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 child’s needs and welfare, must resume the status of the natural parental bond to consider whether terminating the natural parent’s rights would destroy something in existence that is necessary and beneficial.”

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

In the present case, a formal bond assessment was not completed in regard to TJ and AJ. It is noted that a bonding assessment was completed in regard to Mother’s younger two children, LB and IB. In the bonding assessment that Bruce Anderson, Licensed Psychologist, completed in regard to the B children, he did state that it was clear that the resource parents have a significant attachment to all four girls and that all

four girls would be irreparably harmed should their relationship with the resource parents be terminated. The Court cannot find that Father's sporadic phone calls to the children are enough to maintain a necessary and beneficial bond with his children. It is evident from the testimony presented that the longer the children have lingered in care out of both Mother's and Father's physical custody, the more bonded the children have become with the foster parents. The children's primary source of love, comfort, security and closeness comes from the resource parents. Father offered no testimony to the Court to support he has any level of a bond with his daughters. There appeared to be an indication from the testimony of the resource mother that when the girls spoke on the phone with Father, they thought it was AB (the father of Mother's two younger children). Terminating Father's parental rights would not destroy an existing relationship that is necessary and beneficial to the children.

Conclusions of Law

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

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

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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

IN RE: : **NO. 6370**
 :
TJ, and :
AJ, :
 minor children, :

DECREE

AND NOW, this 12th day of **August, 2013**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of WJ, held on June 6 and June 11, 2013, it is hereby **ORDERED** and **DECREED**:

- (1) That the parental rights of WJ be, and hereby are, terminated as to the children above-named;
- (2) That the welfare of the children will be promoted by adoption; that all requirements of the Adoption Act have been met; that the children may be the subject of adoption proceedings without any further notice to the natural mother and 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
Pennsylvania Adoption Information Registry
P.O. Box 4379
Harrisburg, PA 17111
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
4. Online at www.adoptpakids.org/Forms.aspx .

By the Court,

Joy Reynolds McCoy, Judge