

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

**IN RE:** : **NO. 6331**  
:  
**ADOPTION OF** :  
**ZA,** :  
**Minor child** :

**OPINION AND ORDER**

**AND NOW**, this 7<sup>th</sup> day of **March, 2013**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, KN in regard to the rights of her child, ZA on July 30, 2012. Mother seeks to terminate the parental rights of the child's biological father, EA, as a prerequisite to having the child adopted by her fiancé, ER. A hearing on the Petition was held on February 8, 2013. At the time of the hearing, Mother was present with her counsel, David J. Brann, 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. ZA was born on March 28, 2010. She currently resides with her mother, KN, mother's fiancé, ER, half-brother JVH, and half-sister AR at 236 Winters Lane, Montoursville, Lycoming County, Pennsylvania. KN and ER became engaged in July of 2012 and have plans on marrying in July of 2014.

2. The child's father is EA. Father resides at Box 126 Mildred, Sullivan County, Pennsylvania. Father lives with his mother and step-father.

3. Mother and Father began dating in 2008 and lived together at the time of their daughter's birth. At that time Father was laid-off from work which enabled him to stay home with ZA and Mother's son, JVH.

4. Mother and Father separated in June of 2010.

5. After the parties separated Mother maintained primary physical custody of the child. At the time of separation Mother and Father agreed that Father would have physical custody every other weekend and additional time during the week. This custody arrangement remained until Mother's move to Lycoming County, Pennsylvania in May of 2011.

6. After Mother moved from Sullivan County, Pennsylvania Father's contact with the child decreased. During the period of May 2011 until September 2011 Father had approximately four (4) visits with the child.

7. Father's last period of custody was on or about September 24, 2011. At that time Father had an overnight visit with his daughter.

8. In October of 2011 Mother changed her telephone number and failed to notify Father of the change. Father tried to obtain Mother's new telephone number through friends of Mother's in Sullivan County, Pennsylvania however his attempts were unsuccessful.

9. Since 2011 Father has not sent cards, gifts, or letters. Father does have a support obligation that he has struggled to pay which has resulted in findings of contempt.

10. Mother and Father have seen each other at approximately four (4) Child Support Hearings since September 2011. At those times Father has not approached Mother regarding their daughter. During the April 2012 hearing Mother asked Father to relinquish his rights to their daughter; Father refused.

11. Father was incarcerated from April 2012 through August 2012 for failure to pay child support.

12. At one time Father did send Mother a friend request through Facebook which Mother denied. On November 1, 2012 Father contacted Mother's fiancé through Facebook stating something to the effect of 'you think you're going to take my daughter from me but you aint see you soon.'

13. After changing her telephone number in October 2011 Mother has had no out of court contact with Father or his family. She failed to inform Father of her new phone number and then got a new phone which resulted in the loss of all of her contacts.

14. Mother is engaged to ER. They have been in a relationship for two years and have resided together since May of 2011.

15. Father's intention is to become more involved with the child; he plans on filing a Complaint for Custody.

**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).

This case is complex. It is a fact that Father has not seen his child since approximately September 24, 2011. However, the month after Father had his last visit Mother changed her telephone number and failed to inform Father of the change. Mother testified that she just had not thought to provide Father with her new telephone number. After Father tried to contact Mother and discovered that her number was no longer in service Father made attempts to obtain her new number through Mother's friends. Those attempts were unsuccessful. Father did not know where Mother lived. Their custody exchanges had always been at a half-way point. Mother argues that Father had her address because she had filed for custody in September 2011 which was subsequently

withdrawn however the complaint listed her address. Paternal grandmother testified that they were unaware of Mother's address. She further testified that Father thought Mother lived near the Walmart in Montoursville and that in February of 2012 she and Father drove around that area looking for Mother's vehicle but were unsuccessful. Mother alternatively argued that Father could have, but failed to talk to her regarding their daughter at the Child Support Hearings. Father was credible when he stated that one, Mother would not acknowledge him and two, he did not know if a defendant could speak to the plaintiff. Father further testified that after a Child Support Contempt Hearing he asked the presiding judge about his ability to see his child and was told that custody was not the issue before the court.

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 parent has an affirmative duty to be part of a child's life however Mother cannot put up roadblocks and then ask the Court to terminate the rights of Father based on his lack of contact. The Court acknowledges that Father did not make herculean efforts to contact his child and that he should have taken more forceful steps in maintaining contact with his daughter. The Court finds that Mother has not met her

burden of clear and convincing evidence that Father has evidence a settled purpose of relinquishing his parental claim to the child. In addition Mother has not demonstrated that it would be in the child's best interest for Father's parental rights to be terminated.

“Once the statutory requirement for involuntary termination of parental rights has been established under subsection (a), the court must consider whether the child's needs and welfare will be met by termination pursuant to subsection (b).” *Id.* at 483. An analysis of 23 Pa. C.S. § 2511 (b) is not necessary in this case due to the fact that the statutory requirements for involuntary termination have not been established.

**Conclusions of Law**

1. The Court finds that KN has not established by clear and convincing evidence that EA's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

The petition for involuntary termination of parental rights of Father, EA is hereby DENIED.

By the Court,

Joy Reynolds McCoy, Judge