

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

IN RE: : **NO. 6352**
 :
ETS, :
 :
A minor child, :

ORDER

AND NOW, this 18th day of **April, 2013**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, SMS-C, in regard to the rights of her child, ETS. Mother seeks to terminate the parental rights of the child's biological Father, VEB, II, as a prerequisite to have the child adopted by her Husband, FCC. A hearing on the Petition was held on April 17, 2013, at which time Mother and her husband were present and represented by Meghan Young, Esquire, Father did not appear, but was represented by his counsel, Kathryn Bellfy, Esquire, and the Guardian Ad Litem, Angela Lovecchio, participated in part of the hearing by phone.

Findings of Fact

1. ETS was born on June 26, 2003, in Williamsport, Lycoming County, Pennsylvania.
2. Since birth, the child has resided with his mother, SMS-C.
3. The child's father is VEB, II.
4. Mother married FCC on April 21, 2004.
5. Father has had no contact with the child since he was 2-3 years old.

6. Father has only had contact with the child approximately five times during the child's entire life.

7. Two years ago, Mother dropped the child support claim against Father due to the fact that he was not consistent in his payments of child support.

8. Father has not made any attempts to have contact with the child since he last saw the child in 2005 or 2006.

9. All of the five visits the child had with Father during his life were relatively short visits.

10. Some of the visits were initiated by Mother taking the child to Father's place of employment at which time Father showed little or no interest in the child.

11. Approximately one and one-half months ago, after Mother filed the Petition to Involuntary Terminate Father's parental rights, Mother went into Father's place of employment. At that time, Father asked her about the paperwork that she had filed and Mother relayed to Father that the purpose of the paperwork was to terminate his parental rights. At that time, Father responded to Mother that he "did not care".

12. During that same conversation, Mother told Father that ETS did not appreciate the fact that Father was absent from his life and had no contact with him. Father's response to Mother's statement was "oh well".

13. Throughout the child's life, Father has known where Mother resides as Mother and Father have plenty of mutual friends.

14. Mother's telephone number has always been listed in the phone book.

15. The only father the child has known is his step-father, FCC.

16. The child refers to FCC as “dad”.
17. The child has an emotional bond with FCC.
18. Mother told the child about his biological father immediately before the Guardian Ad Litem met with him.

Discussion

The Petition filed by Mother and step-father does not state the specific section of the Statute that they are seeking the termination of Father’s parental rights. It is the Court’s assumption that they intend to seek the involuntary termination of Father’s parental rights on the following grounds:

§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 that Father has failed to perform parental duties on behalf of the minor child well in excess of six months and has demonstrated a settled purpose to relinquish his parental claim to the child. In fact, the Court finds that Father has failed to perform parental duties on behalf of the child for the child's entire life. Father has only seen the child on five occasions during his ten years of life. From the testimony, it is apparent that the majority of these times occurred at the initiative of Mother. During

these five short visits, Father showed little or no interest in the child. Father has made no attempt to contact the child or establish any type of relationship with the child. When Mother spoke with Father regarding the Petition to Terminate his rights, Father's response was that he did not care. In addition, Father has failed to appear at the pre-trial in regard to the Petition to Involuntary Terminate his parental rights, as well as the hearing that was scheduled in regard to the involuntary termination of his parental rights.

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 has absolutely no bond with the child. The only father the child has ever known is FCC, his step-father. The child has not seen Father since he was approximately 2-3 years of age and, in fact, had no idea about his biological father until Mother told him about his biological father as a result of these proceedings. It is clear that Father has no bond with the child. Further, termination of Father's parental 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 the Agency has established by clear and convincing evidence that VEB, II's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that the Petitioners have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of ETS will best be served by termination of VEB, II'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. 6352**
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DECREE

AND NOW, this 18th day of **April, 2013**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of VEB, II, held on April 17, 2013, it is hereby ORDERED and DECREED:

- (1) That the parental rights of VEB, II, 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 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

JRM/jrr