

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

IN RE: : **NO. 6344**
:
KMS and :
KS, :
:
minor children, :

OPINION AND ORDER

AND NOW, this 12th day of **July, 2013**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, ALF, in regard to the rights of her children, KMS and KS. Mother seeks to terminate the parental rights of the children's biological father, KSS, as a prerequisite to having the children adopted by her husband, DWF. A hearing on the Petition was held on July 11, 2013. At the time of the hearing, Mother was present with her counsel, Patricia Bowman, Esquire. The Guardian Ad Litem, John Pietrovito, Esquire, was present on behalf of the children. Father, KSS, failed to appear at the time of the hearing. The Court notes that Father also failed to appear at the Pre-Trial conference held on March 20, 2013. At that time, an Order was issued advising Father that he must notify the Court within ten days of that Order as to whether or not he objected to the entry of an order terminating his parental rights and whether or not he wished for counsel to be appointed on his behalf. Additionally, notice was given of the termination hearing date of July 11, 2013, at 3:30 p.m. in Courtroom No. 5 of the Lycoming County Courthouse. A hearing was held on July 11, 2013.

Finding of Facts

1. KMS was born September 30, 2002. She currently resides with her Mother, ALF, and her step-father, DWF, in Montoursville, Lycoming County, Pennsylvania.
2. KS was born November 28, 2004. He currently resides with her Mother, ALF, and her step-father, DWF, in Montoursville, Lycoming County, Pennsylvania.
3. ALF and DWF, II, were married on January 14, 2009.
4. Mother and the biological father were never married.
5. Father is currently in the Navy and currently resides in Imperial Beach, California.
6. Since the birth of both children, they have been in the primary physical custody of Mother.
7. It has been approximately three years since Father had any physical contact with the children.
8. The last contact Mother had from Father was a text sent in September, 2012, when Father threatened Mother that he was going to take custody of the children. He did not ask to speak with or see the children at that time.
9. KS has never had a relationship with Father.
10. Father has denied KS as his child.
11. KMS's relationship with her Father extended only to the Father spending time coming around on birthdays and holidays and occasionally talking with her on the phone. This, however, has not occurred in over three years.
12. Mother is aware that Father was in the area in April, 2013, and at that time, made no contact with either her or her children.

13. Though Mother has relocated to a new residence in Lycoming County, her telephone number has remained the same. This is the same phone number that Father texted her on in September, 2012.
14. At no time has Father asked for Mother's new address.
15. DWF has been involved in the children's lives since January, 2005. At that time, KS was only one to two months old and KMS was approximately two years old.
16. Both KS and KMS refer to Mr. F as "dad" or "daddy".
17. Both children began to refer to Mr. F as "dad" or "daddy" once the children that Mother and Mr. F have together began to speak and refer to him as "dad" or "daddy".
18. It appears as if there was a natural development with the children KMS and KS referring to Mr. F as father.
19. Mother and Mr. F have three additional children, Autumn, age 6; Aubrey, age 3; and Brody, age 2.
20. In both KS's and KMS's minds, Mr. F already is their father.
21. There will be no detrimental effect to KMS and KS if Father's parental rights are terminated.

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 a settled purpose of relinquishing his parental claim. During the past three years, the Father has had no physical contact whatsoever with the children. Though Father has provided financial support for the children, being a parent requires more than just providing financial support for the child through court-ordered child support. Father's failure to appear at the Pre-Trial or the Hearing on the involuntary termination of parental rights or to even contact the Court or Mother's counsel regarding the pending petition further evidences his settled purpose to relinquish his parental claim.

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 either child. The only father that KS knows is DWF, II. Though KMS has some recollection of Father, it is clear that she views Mr. F as her father. It is clear to the Court that there is not a bond between Father and either child and termination of his rights would not destroy an existing

necessary and beneficial relationship as there currently exists no relationship between Father and the child. It is clear that in both children's minds, Mr. F is already their father.

Conclusions of Law

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

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

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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DECREE

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

- (1) That the parental rights of KSS 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 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