

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

IN RE: : **NO. 6365**
:
MRD and :
TD, :
:
minor children, :

OPINION AND ORDER

AND NOW, this **19th** day of **August, 2013**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, MD and maternal grandfather, MiD in regard to the rights of the minor children, MRD and TD, born on February 5th, 2013. Mother and Grandfather seek to terminate the parental rights of the children's biological father, MC, as a prerequisite to having the child adopted by her father, MiD. A hearing on the Petition was held on August 13, 2013.

A petition to terminate a natural parent's parental rights, filed by one natural parent against the other under Section 2512(a)(1), is cognizable only if adoption of the child is foreseeable. *In the Matter of the Involuntary Termination of Parental Rights to E.M.I., a Minor Child; Appeal of: L.J.I.*, 57 A.3d 1278, 1285 (Pa. Super. 2012). While an averment of contemplated adoption might be sufficient to obtain a hearing on the termination petition, at the termination hearing the petitioning parent must demonstrate the planned adoption is also in the child's best interest, before the court will terminate parental rights of the responding parent... thus the court must address and evaluate the proposed adoption that was averred at the time of termination. *Id.*, at 1287. The Supreme Court has held that the Adoption Act permits a non-spouse to adopt a child where one of

the child's parents continue to retain custody "upon good cause shown". *In re Adoption of R.B.F.* 803 A.2d 1195, 1202 (Pa. 2002). In order for a parent seeking termination to be successful, that parent must demonstrate that [a] new parent-child relationship is foreseen. *In re E.M.I., at 1287.*

In the Matter of the Involuntary Termination of Parental Rights to E.M.I., a Minor Child; Appeal of: L.J.I., the Superior Court ruled on an issue regarding termination and adoption in a same-sex couple. Mother sought to terminate Natural Father's rights in order for her same-sex partner to adopt the minor child who at the time was four years old. Mother and her partner lived together with the child and maternal grandparents. The minor child was born in 2008. Mother and her partner began dating in 2009. The court found it was not clear who financially supports the child. Mother's partner performed parental duties such as bathing, feeding, and dressing the child. *Id.* at 1281. The trial court denied Mother's petition for termination, based on the finding that Mother had failed to demonstrate the strength of her partner's potential adoption. *Id.* at 1282. In assessing the proposed adoption the court borrowed from the cause shown standard of Section 2901 of the Adoption Act to determine whether the Child would be placed in a new parent-child relationship and foster creation of a family unit, and further the best interests of the child. *Id.* at 1288. The lower court did not find that a "genuine parent-child relationship" existed between the minor child and mother's partner. *Id.* at 1289. The Court noted mother and her partner had never lived on their own with the child as a defined family unit. *Id.* at 1289. The record did not reflect adoptive mother had ever contributed financially to the child's support. *Id.* at 1289. Upon review, the Superior

Court held “under these specific facts and circumstances the court’s decision was not an abuse of discretion”. *Id.* at 1290. Quite simply, Mother did not carry her evidentiary burden. *Id.* at 1290.

Similarly, in the case at hand, this Court must first address and evaluate the proposed adoption of the children by Maternal Grandfather while Mother retains her parental rights. Mother has demonstrated good cause for an adoption by Maternal Grandfather in this instance.

Mother and Maternal Grandfather have shared parental duties of the minor children since their birth on October 14th, 2004. Immediately after MRD’s birth, he was transported to a separate hospital from Mother and TD. Maternal Grandfather traveled to and from each hospital to see the boys. After leaving the hospital the boys and Mother returned to Grandfather’s home where he took on a regular role in diapering and feeding. Grandfather regularly held TD to help him fall asleep. Maternal Grandfather got up with the children in the night.

MRD and TD lived at Maternal Grandfather’s home until they were 22 months-old. Thereafter, Maternal Grandfather provided housing for the boys while they lived in Jersey Shore. Maternal Grandfather continues to provide significantly for the boys through groceries and other assistance. Maternal Grandfather has requested certain work hours around his need to be available to pick the boys up after school. Grandfather has picked the boys up regularly from daycare, preschool, kindergarten and first grade. Grandfather knows the boys’ interests and participates in their activities. This involvement in the boys’ lives has continued and developed at the boys’ various stages

from pretending to be pirates to learning football skills. Grandfather stated that the boys depend on him.

Grandfather has played a regular role in decision making in the boys lives. Grandfather attended school conferences and has dealt with discipline issues as a team with Mother. Grandfather had traveled to doctor's appointment with Mother. Grandfather and Mother have co-parented MRD and TD. Grandfather vacations with the boys. Grandfather assists in homework. Grandfather has disciplined the boys. Grandfather attends school functions with the boys. Grandfather has taken the boys to his place of employment and regularly along on jobs. Grandfather testified that he "raised" his other children the same way he is raising MRD and TD. Grandfather has been MRD's and TD's de facto father since birth. It is clear from the testimony presented that Maternal Grandfather and Mother together have raised the boys. Grandfather's role in the children's lives extends far beyond the role of a typical grandparent. Grandfather is clearly one half of the parental unit that has raised the children. Grandfather's authority, control and influence over the children is equal to that of Mother.

Maternal Grandfather has been in the role of parent for the children on a nearly daily basis and will continue to do. Maternal Grandfather expressed concern of providing for the boys education and financial future. Grandfather's present job as an instructor at Pennsylvania College of Technology will provide free tuition for the boys if they are legally adopted by Grandfather.

Mother has demonstrated good cause as to why this adoption should be allowed to proceed. Adoption by Maternal Grandfather in this case would simple memorialize that

status quo of MRD and TD's lives. Maternal Grandfather will continue to raise them as his children.

Finding of Facts

1. MRD and TD were born on October 14th, 2004, in Williamsport, Lycoming County, Pennsylvania. The children currently reside with their mother at 918 Arthur Road, Montoursville, Lycoming County, Pennsylvania. The children's mother is MD, who was born on May 4th, 1979. Mother is currently unmarried. The children's maternal grandfather is MiD, who was born on April 8th, 1958. He currently resides at 163 Cross Mountain Lane, South Williamsport, Lycoming County, Pennsylvania. Maternal grandfather is currently married to MaD, maternal grandmother.

2. The children's father is MC. Father resides at 30575 206th Street, Pierre, South Dakota. Mother and Father met while Mother was teaching in South Dakota in 2002.

3. Mother and Father lived together in South Dakota until Mother returned to Pennsylvania in October 2003.

4. Father moved to Pennsylvania briefly in January 2004, but returned to South Dakota.

5. After Father left Pennsylvania, Mother learned of her pregnancy. Mother informed Father of her pregnancy and Mother and Father spoke infrequently throughout the pregnancy.

6. Mother moved into the home of the maternal grandfather during her pregnancy.

7. The majority of Father's family resides in South Dakota.

8. The majority of Mother's family resides in Pennsylvania.
9. In October of 2004, Father traveled to Pennsylvania following the children's birth for a few days.
10. Father is not on the children's birth certificate.
11. In December of 2004, Father traveled to Pennsylvania to visit the children. Father stayed in Maternal Grandfather's home.
12. In January of 2006, Father traveled to Pennsylvania for a visit. Mother planned special experiences between Father and the children such as their first haircuts, a professional photo session and shopping trips.
13. In February 2006, Mother discussed with Father she and the children traveling to South Dakota to meet the children's extended family. Father was not supportive.
14. In approximately August of 2006, Mother moved from maternal grandfather's home to 501 Washington Avenue, Jersey Shore, Pennsylvania. The home was owned by Maternal Grandfather and had previously been a rental property. Maternal Grandfather charged Mother no rent for the home.
15. Father was aware of the address changed as evidenced by an envelope sent by Father to 501 Washington Avenue in December of 2006. The envelope was entered into evidence.
16. In August of 2006, Mother began working at Williamsport Area School District.
17. The parties' communication became extremely infrequent.
18. Mother received the last written correspondence sent by Father in January of 2007.

19. In the Spring of 2007, Father contacted Mother. Mother felt Father was drunk during this phone call.

20. Mother changed her phone number to an unlisted number following the Spring 2007 phone call. Mother's address remained unchanged until 2010. Maternal Grandfather's address remained the same from the time of the children's birth until the hearing on August 13th, 2013.

21. At the time of the hearing on the Petition for Termination of parental rights, Father had not seen MRD or TD since January 2006.

22. At the time of the hearing on the Petition for Termination of parental rights, Father had not sent MRD or TD written correspondence since January 2007.

23. Father did not send cards or gifts to the children because he was unsure if Mother's address had changed.

24. Father contacted an attorney in 2009 to discuss custody.

25. Father knows how to contact Mother's parents in Pennsylvania. Father had no contact with Mother's parents.

26. Father has provided little support for the children during the first few years of their lives. Father sent Mother money on one occasion and bought gifts on his January 2006 visit. Father has provided no further support.

27. Father has sent little more correspondence than six greeting cards to the children throughout their lives.

28. In the November of 2012, Father called and left a voicemail at Mother's place of employment, Williamsport Area School District. Mother did not return Father's phone call.

29. Father filed for custody in December 2012, Mother received Notice of the proceeding in January 2013.

30. Mother filed her Petition for Termination of Parental Rights on February 5th, 2013.

31. MRD and TD did not learn of the existence of their biological father, MC until the summer of 2013.

32. Mother informed the children of the existence of their biological father due to the pending termination hearing and the fact that the children would be speaking with the Guardian Ad Litem regarding their father.

33. When Mother, or the Guardian Ad Litem, discussed Father with the children, they listed either "Pa Pa", Maternal Grandfather or "God" as their father.

34. The children have no bond with Father.

35. Father's intention is to become more involved with the children and form a relationship with the children.

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 re: 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 evidenced a settled purpose of relinquishing his parental claim. Father failed to contact his children or their Mother from the spring of 2007 until November of 2012. In November 2012, Father left a voice message for Mother at her place of employment. Father reasoned he did not know any other means to contact Mother. The message did not mention either of his sons. Mother had been employed by the Williamsport Area School District since 2006 and Mother had previously told Father of that employment. Mother was a teacher when Father met her. Mother's parents continued to reside at the same address where Father had visited with the children. Father had consulted an attorney regarding his custodial rights in 2009. Father's testimony that he had no way of contacting Mother is not credible. Father's filing of a Petition for Custody in the 6-month period prior to the filing for Termination alone is not sufficient especially since this Court must consider the entire background of the case. Father has failed to exert himself to maintain a role in his children's lives.

From the Spring of 2007, to the date of the filing of the Petition in February 2013 almost six years of the 8 year old children's life, Father has failed to show even a passive

interest in his child. Father's intent to become more involved in the children's lives is not sufficient. A parent has an affirmative duty to be part of a child's life.

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 the children. The only father-figure that the children have is Maternal Grandfather. There was no testimony from any party demonstrating any bond between Father and the minor children. There was no evidence presented that the children had any recollection of or even knowledge of Father until the summer of 2013. It is clear that Father has no bond with the child. Further, termination of his rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and the children.

Conclusions of Law

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

2. The Court finds that MD and MiD have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of MRD and TD will best be served by termination of MC'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. 6365**
:
MRD and :
TD, :
:
a minor child, :

DECREE

AND NOW, this **19th** day of **August, 2013**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of MC, held on August 13, 2013, it is hereby **ORDERED** and **DECREED**:

- (1) That the parental rights of MC 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
Adoption Medical History Registry
Hillcrest, Second Floor
P.O. Box 2675
Harrisburg, PA 17105-2675
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

By the Court,

Joy Reynolds McCoy, Judge