

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

IN RE:	:	NO. 6372
	:	
ADOPTION OF	:	
MSS,	:	
Minor child	:	

OPINION AND ORDER

AND NOW, this 29th day of **August, 2013**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, JLE, in regard to the rights of her child, MSS, on March 25, 2013. Mother seeks to terminate the parental rights of the child's biological father, MJS, as a prerequisite to having the child adopted by her Husband, AAT. A hearing on the Petition was held on August 27, 2013, at which time Mother and her Husband, AAT, were present with their counsel, Heather Lewis, Esquire. Father was present with his counsel, Kathryn Bellfy, Esquire. The Guardian Ad Litem, Angela Lovecchio, Esquire, was present on behalf of the child.

Findings of Facts

1. MSS was born on January 10, 2009, in Williamsport, Lycoming County, Pennsylvania. She currently resides with her Mother, JLE, and step-father, AAT, at 34 Stone Lane, Williamsport, Lycoming County, Pennsylvania.
2. The child's Mother is JLE, who was born on August 8, 1981. She is currently married to AAT who was born on March 16, 1983. AAT and JLE were married on March 4, 2013.

3. The child's Father is MJS. Father is currently incarcerated in the Lycoming County Prison on a probation violation max out sentence. Father has been incarcerated since March, 2013. He is scheduled to be released on September 6, 2013.
4. Mother and Father have known each other since they were young children. After high school, they went their separate ways and reconnected in 2007. Mother and Father moved into together in the Fall of 2008 and their daughter, MSS was born on January 10, 2009.
5. From the time of their child's birth until August or September of 2009, Mother and Father resided together and were raising their daughter together.
6. Mother and Father separated in August or September of 2009.
7. Father continued to see his daughter after Mother and Father's separation as he and Mother were able to agree.
8. Mother and Father utilized CH, Mother's mother's long-term boyfriend as an intermediary between them regarding MSS.
9. Father became concerned because he was unable to see his daughter as much as he wanted, especially on the holidays, and Father filed a Complaint for Custody on January 11, 2010.
10. A Custody Conference was held on February 9, 2010, at which time the parties reached an agreement in regard to custody. Pursuant to the parties' agreement, they shared legal custody of their daughter. Additionally, the parties shared physical custody of their daughter with Father having physical

custody every other weekend from Friday until Sunday, every Thursday evening, and specified times on holidays.

11. In the Summer or Fall of 2010, several months after Mother and Father separated, Father was unable to continue to keep the apartment that he was residing in where Mother and Father had resided together.
12. Father testified that he felt stretched and was falling behind on his bills. He indicated that he went to CH and spoke to him regarding the problems he was facing.
13. Mother's mother's long-term boyfriend, CH, allowed Father to move into a residence which he owned at 2028 Lincoln Street, Williamsport, Pennsylvania. CH allowed Father to reside at this residence rent-free and without the responsibility of paying for utilities.
14. CH testified that he allowed Father to reside in his residence, rent-free, and to pay his utilities in order to provide MSS a safe place to go to visit Father.
15. From the time the parties separated and even after the entry of their custody order, CH was utilized as a liaison between the parties to help effectuate custody exchanges, as well as communication between the parties in regard to custody.
16. Mother and Father, through CH, agreed for Father to have additional periods of time with the child in addition to those outlined in the custody order. At times, Father had up to equal custody time with the child as Mother.

17. Father and Mother stopped communicating directly with each other in the Fall of 2010.
18. Mother had no concerns regarding the care Father provided for MSS when she was in his custody.
19. Father generally provided for MSS's needs while she was in his custody.
20. Father and CH developed a friendship. CH spent time with Father and MSS during custody exchanges and at times, CH would take Father and MSS out to eat.
21. In the Spring of 2011, Father advised CH that he was no longer going to exercise his periods of physical custody with MSS. Father indicated at this time that he had lost his vehicle and he was feeling stretched thin. Father testified that he stopped exercising his physical custody rights because he felt it was the best thing to do for his daughter. Father felt that he needed to concentrate on finishing his degree and complete the probation that he was currently serving. Father indicated that it was always his intention that he would come looking for his daughter in the future, once he was able to provide properly for her.
22. During the Summer of 2011, Father went to MSS's daycare on three occasions to see her.
23. The last time Father exercised his physical custody rights with MSS was in March, 2011. The last time Father saw MSS was in the Summer of 2011 when he stopped at daycare.

24. CH testified that the discussion between he and Father had always been that Father would need to move from his residence at the end of May, 2011.
25. Father continued to reside at CH's residence until August, 2011.
26. In August, 2011, Father relocated to Lock Haven, Pennsylvania. By the move to Lock Haven, Father was moving from Lycoming County to Clinton County.
27. Father was on probation in Lycoming County under a four year intermediate punishment sentence. In 2007, Father was charged with possession with intent to deliver.
28. Father failed to advise his probation officer that he was relocating from Lycoming County. Father failed to report to his probation officer once he relocated to Clinton County.
29. Father testified that he did not notify his probation officer of his move to Lock Haven because he did not believe his probation officer would allow him to relocate to Clinton County. The purpose of Father relocating to Clinton County was to attend Lock Haven University where he had been offered a teaching assistantship.
30. Father was aware that he had absconded from supervision.
31. Father has never paid any child support on behalf of MSS.
32. From the Summer of 2011 until the filing of the Petition to Involuntarily Terminate his parental rights, Father failed to have any communication with

his child, Mother, or her family. Father did not send any gifts or cards to the child.

33. Father testified that he was not aware of any obstacles put in the way by Mother for him to see his daughter.
34. Father testified that he was never refused a visit with MSS by Mother or CH.
35. Father testified that he did not make an attempt to be in touch with his daughter because he was afraid that Mother would contact his probation officer and he would be put in prison
36. When Father was asked what his plan was in regard to his daughter when he stopped seeing her, Father stated that he did not have an exact plan, that he felt overwhelmed, but that he wanted to obtain the fastest route back to a relationship with his daughter.
37. Father graduated with his Bachelor's Degree in Philosophy in December, 2011.
38. Father indicated that he did not attempt to get back in contact with his daughter after he obtained his degree because he was working on a plan to be pardoned from his criminal charges and had started working on his master's degree.
39. Father testified that his decision to stop exercising physical custody with his daughter was a perfect storm of events, in that, at that time, he was trying to relocate to Lock Haven to complete his degree, trying to obtain a vehicle

because he did not have transportation, and trying to resolve his criminal matters.

40. Father stated that since the day his daughter was born, he knew he was no longer living for himself, that MSS was his conscious and every choice he made was to find a way to be in her life.

41. Despite the fact that he has not seen his daughter in two years, Father still believes that he and MSS are very, very close.

42. MSS refers to her step-father, AAT, as “daddy”.

43. AAT and MSS have a close father-daughter relationship and MSS is 100% bonded to AAT.

44. MSS, on one or two occasions, when she sees a building familiar to her near where Father used to reside, has made the statement “that’s where my other daddy lives”.

45. MSS considers her mother, AAT, and her 22-month old brother, T, to be her family.

Discussion

Mother asserts that the grounds for termination of the Father’s parental rights may be found in 23 Pa.C.S. §2511(a)(1), which reads:

§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 evidence 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 §2511(a)(1) where a parent demonstrates a settled purpose of relinquishing parent claim to a child **or** fails to perform parental duties for at least six months prior to filing for the termination petition. In the Interest of C.S., 761 A.2d 1197, 1201 (Pa. Super. Ct. 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. Ct. 2004), appeal denied, 872 A.2d 1200 (2005) citing In Re: D.J.S., 737 A.2d 283, 286 (Pa. Super. Ct. 1999).

In order to determine 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 characterizes 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).

"[P]arental rights are not preserved... by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with his or her immediate physical and emotional needs."

In re Adoption of Godzak, 719 A.2d 365, 368 (Pa.Super.1998) (citation omitted).

In the instant matter, Father ceased exercising his court-ordered custody time in March of 2011. Father testified that he made this choice because he felt that was best for his daughter. Father last saw the minor child in the summer of 2011. From the summer of 2011 until Mother's filing of the Petition to Terminate, Father did not attempt to contact Mother, his child or Mother's family. Father sent no gifts or cards. Father paid no child support. For a period of nearly two years Father completely failed to perform any sort of parental duties. The statute requires this Court to consider the 6-month period preceding Petition for termination; however this period shall not be mechanically applied. Father's behavior exceeds the minimum time-frame of six months. At the time of the filing of the Petition, MSS was four years old. Father had not seen MSS since she was two years old. For half of MSS's life, Father has failed to perform any parental duties.

Father would have this Court consider the obstacles that were in place regarding continued contact with his child. Father testified he stopped his visitation due in part to losing his vehicle. At the time both Mother and Father lived in the same area. Father relocated away from his child in August 2011 to pursue his degree. Father absconded

from supervision. Father testified that he did not contact Mother because she was afraid she would contact his probation officer. Father did not abscond from supervision until five months after Father voluntarily ceased his visits. Father testified that he was not aware of any obstacles put in the way of his custody by Mother. Father has not exerted himself to maintain a place of importance in his child's life. Father has not demonstrated even a passing interest in MSS's life.

Father testified to his good intentions regarding his relationship with his daughter. Father planned to obtain his degree, a vehicle, and a pardon. Father indicated his intention was to become involved in his daughter's life when he could properly provide for her. The law is clear that parents may not wait until a more convenient time to become involved in their children's lives. Father's intentions do not excuse his refusal and failure to perform parental duties for a period well exceeding six months of his child's life.

Mother has met her burden of clear and convincing evidence that Father has refused or failed to perform parental duties for a period exceeding six months.

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., 761 A.2d 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. Ct. 2008)(citing In Re: I.A.C., 897 A.2d 1200, 1208-09 (Pa. Super. Ct. 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. Ct. 1996), appeal denied, 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. Ct. 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., 761 A.2d at 1202.

Despite Father’s testimony that the two are “close”, the Court finds no bond exists between MSS and Father. MSS is four years old and has not seen Father since she was two years old. Although MSS does have some knowledge of another “daddy”, due to her age and the period of time of no contact it is doubtful MSS even remembers Father. There would be no trauma to MSS should the parental rights of Father be terminated.

Termination of Father's parental rights would not destroy an existing, necessary and beneficial relationship as there currently exists no relationship between Father and MSS. The developmental, physical and emotional needs and welfare of the child would best be served by terminating Father's rights and allowing MSS to be adopted by her step-father.

Conclusions of Law

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

2. The Court finds that JLE has established by clear and convincing evidence that the developmental, physical, and emotional needs and welfare of MSS will best be served by termination of MJS'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,
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IN RE:	:	NO. 6372
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ADOPTION OF	:	
MSS,	:	
Minor child	:	

DECREE

AND NOW, this 29th day of **August, 2013**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of MJS, held on August 27, 2012, it is hereby ORDERED and DECREED:

- (1) That the parental rights of MJS 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
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