

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE : ORPHAN'S COURT DIVISION

BW, : NO. 6374

A minor child. :

OPINION

Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)

This appeal pertains to the Court's opinion and order of September 4, 2013, denying Mother and ex-husband's petition to terminate Father's parental rights. The child's Guardian *ad litem* (GAL), who told the Court in a few words that he was not taking a strong stance on Mother and ex-husband's termination petition during the proceeding, appealed this Court's denial on September 20, 2013. Mother and ex-husband filed their appeal on September 26, 2013. Mother filed her statement of issues complained of on appeal with her notice of appeal. GAL has not filed his statement as of the date of this Opinion.

Mother and ex-husband's concise statement provides that the Court erred in five (5) respects when it denied their petition to terminate Father's rights; these areas include: (1) failing to find that Mother and ex-husband did not meet their evidentiary burden; (2) finding that a bond exists between Father and BW; (3) failing to consider the best interest of the child; (4) failing to terminate Father's parental rights; and (5) making findings that were not supported by the record.

The Court believes that the issues were fully covered in the Court's opinion of September 4, 2013. Father was prevented from performing parental duties because of a protection from abuse order, state incarceration, and his status as a parolee. As reflected in the

record, Mother opposed Father's custody efforts using both protection from abuse and emergency custody orders prior to Father's state incarceration. As soon as Father was released from state prison, he began paying his child support obligation, and, at the time of trial, Father's obligation was overpaid. Additionally, when Father's parole officer granted him permission to file custody, Father filed for the reinstatement of his custodial time with BW. The Court stresses that Father's request for custody was submitted prior to Mother and ex-husband's filing of the instant termination proceeding.

Although the Court did not reach this issue in its opinion of September 4, 2013, the Court also believes that the termination of Father's parental rights in favor of the adoption of BW by Mother's ex-husband would not create an appropriate, new family unit. *See In re: E.M.I.*, 57 A.3d 1278, 1289 (Pa. Super. Ct. 2012).

For the reasons stated herein, the Court respectfully requests that our Superior Court affirm its opinion and order of September 4, 2013, denying Mother and ex-husband's request to terminate Father's parental rights to BW.

BY THE COURT,

Date

Richard A. Gray, J.

cc: Janice Ramin Yaw, Esq.
Timothy Reitz, Esq.
Kirsten Gardner, Esq.
Gary L. Weber, Esq. – Lycoming County Reporter