

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

IN RE:	:	NO. 6410
	:	
ADOPTION OF	:	
JMH,	:	
Minor child	:	

OPINION AND ORDER

AND NOW, this 18th day of **August, 2014**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, ASG, in regard to the rights of her child, JMH, on February 24, 2014. Mother seeks to terminate the parental rights of the child's biological father, JWH as a prerequisite to having the child adopted by her Husband, WHG. A hearing on the Petition was held on July 28, 2014, at which time Mother and her Husband, WHG, were present with their counsel, W. Jeffrey Yates, Esquire. Father was present with his counsel, Jeffrey Frankenburger, Esquire. The Guardian Ad Litem, Jennifer Ayers, Esquire, was present on behalf of the child.

Findings of Facts

1. JMH was born on September 12, 2010 in Williamsport, Lycoming County, Pennsylvania. She currently resides with her Mother, ASG, and step-father, WHG at 1107 Packer Street, Williamsport, Lycoming County, Pennsylvania.

2. The child's Mother is ASG, who was born on May 18, 1991. She is currently married to WHG who was born on November 24, 1987. ASG and WHG were married on April 22, 2014.
3. The child's Father is JWH. Father currently resides on Park Avenue in Williamsport, Pennsylvania. Father has been employed with Integrity Building Company since August 2013.
4. Mother and Father have known each other since they met through friends in the summer of 2009. Mother learned she was pregnant in November 2009. Mother and Father moved into together in the January 2010 and their daughter, JMH was born on August 12, 2010.
5. In September 2010, approximately 2 weeks after Child's birth, Father was sentenced to six months incarceration. During Father's incarceration Mother regularly brought the child to visit Father.
6. From the time of Father's release until June or July of 2011, Mother and Father resided together and were raising their daughter together.
7. Mother and Father separated in June or July of 2011.
8. Mother moved in with her Aunt in South Williamsport, following the parties' separation. Father was aware of Aunt's address and picked Child up there.
9. Father continued to see his daughter after Mother and Father's separation as he and Mother were able to agree.

10. Father saw the child every few weeks but at times would return her to Mother because he could not provide food or milk. In December of 2011, Mother decided to stop voluntarily giving Child to Father because of her concerns over his ability to provide for her.
11. In January 2012, Mother moved in with WHG at their current address.
12. Father called Mother around Christmas 2012 and sent sporadic Facebook message throughout 2012 asking to see his daughter. Mother then blocked Father from her Facebook account and deleted said account. Mother later created a new Facebook account which Father was not blocked from viewing, although she did not add Father as a "friend".
13. Mother worked at Olive Garden from prior to Child's birth until August, 2013. Father saw Mother at her employment when he visited his sister, JH. Father did not confront Mother about seeing his daughter.
14. Mother has the same telephone number she had throughout her relationship with JWH.
15. Since December, 2013, Mother has received no gifts cards or support for the child. Father has not seen his daughter since at least January, 2012. Father by his own testimony stated he last called Mother in August of 2013.

16. Father's sister has maintained contact with Mother including at least one visit to her current address and an outing to a local restaurant. Mother indicated she did not want Father to be present at the outing.
17. Father filed a Complaint for Custody on December 9, 2013.
18. A Custody Conference was held on February 26, 2014, at which time the custody action was stayed pending resolution of the Petition for Involuntary Termination.
19. WHG, step-father first met child in September 2011.
20. WHG received two text messages from Father in late 2011. WHG maintained the same phone number until July 2014.
21. Child refers to her step-father, WHG, as "daddy".
22. WHG and Child have a close father-daughter relationship and Child is bonded to WHG.

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 cannot find in the instant matter that Father has demonstrated a settled purpose to relinquish his parental claim. Father did sporadically contact Mother via telephone and Facebook. He also repeatedly discussed his interest in Child with his own sister. Father eventually filed a complaint for custody. However, Father's passing interest in the child is not enough to overcome that Father has failed to perform parental duties for at least six months prior to the filing.

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 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).

"[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 has not seen his child since at least January 2012. From the summer of 2011 until Mother's filing of the Petition to Terminate, Father did sporadically attempt to contact Mother however Father did not attempt to contact Mother after August 2013. Father did not contact Mother's family or family friends to inquire regarding JMH. 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, Child was three years old. Father had not seen JMH since she was 16 months old. Father has failed to perform any parental duties.

The Court has considered the obstacles that were in place regarding Father's continued contact with his child. Mother testified that she stopped voluntarily turning the child over to Father. Father testified at times his phone calls were not returned. Both parties testified that Father demanded to see his child on several occasions. Mother changed her Facebook page and moved out of her aunt's home. Although Mother has not supported Father's role in child's life, Father has not exerted himself to maintain a place of importance in his child's life. Father did not seek Court intervention. Although Mother had moved, there was no testimony that Father ever sought out Mother's new home or even stopped at her previous residence in an attempt to see his daughter. Father never confronted Mother at her place of employment. Father never sent gifts or cards through his sister who maintained contact with Mother. Father has only demonstrated a passing interest in JMH's life through conversations with his own family members.

Father testified that WHG was in part to blame for his limited contact with his child. However, there was absolutely no testimony regarding WHG's

interference or any altercations between the parties. Father testified that he always thought “God would move [mother’s] heart and she would allow him to see” JMH. 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. The law is clear that parents may not wait until a more convenient time to become involved in their children’s lives.

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.

Father offered no testimony that there was a bond between himself and JMH. JMH is almost four years old and has not seen Father since she was less than two years old. Due to her age and the period of time of no contact it is doubtful JMH even remembers Father. The Guardian Ad Litem found there was no bond between Child and Father. There would be no trauma to JMH 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 is no relationship between Father and JMH. JMH does have a bond with her step-father WHG. WHG has been performing parental duties. The developmental, physical and emotional needs and welfare of the child would best

be served by terminating Father's rights and allowing JMh to be adopted by her step-father.

Conclusions of Law

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

2. The Court finds that ASG has established by clear and convincing evidence that the developmental, physical, and emotional needs and welfare of JMh will best be served by termination of JWH'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. 6410
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ADOPTION OF	:	
JMH,	:	
Minor child	:	

DECREE

AND NOW, this 18th day of **August, 2014**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JWH held on July 28, 2014, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JWH 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