

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

IN RE: : **NO. 6409**
 :
TG, :
 :
a minor child, :

OPINION AND ORDER

AND NOW, this **15th** day of **August, 2014**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, LD in regard to the rights of her child, TG, on February 19, 2014. Mother seeks to terminate the parental rights of the child's biological father, BC, as a prerequisite to having the child adopted by her husband, JD. A hearing on the Petition was held on July 30, 2014. BC did not appear at the time set for the hearing. BC had proper Notice and had spoken to his court appointed attorney as well as the Child's Guardian Ad Litem prior to the hearing.

Finding of Facts

1. TG was born on June 3, 2006 in Lycoming County, Pennsylvania. He currently resides with his two-half brothers, his mother, LD and step-father, JD, at 176 Orchard Road, Muncy, Lycoming County, Pennsylvania. The child's mother is LD who was born on December 22, 1984. She is currently married to JD who was born on December 26, 1980. LD and JD were married on March 24, 2012.
2. The child's father is BC. Father resides at 316 Lee Avenue, Millarsville, Pennsylvania.

3. Mother and Father reached a custody agreement, which was made an Order of Court on May 16, 2008. Father exercised his periods of partial custody for a short period of time.
4. Mother and JD began living together in November of 2008.
5. Father stopped exercising his partial custody in the Spring of 2009. Father has not attempted to contact Mother or Child since May of 2009.
6. Father has sent no cards, gifts, or necessities for Child.
7. Mother maintains the same cell phone number Father had used to contact Mother in the past.
8. Maternal grandparents whom Father knows still live at the same address and have the same phone number.
9. TG does not remember having met Father.
10. TG calls JD "Dad".
11. JD takes TG to practices and performs other parental duties.
12. TG is bonded to JD.
13. The Guardian Ad Litem found that the LD and JD were already a loving family and that the proposed Adoption would lead to total stability for the minor child.

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 cannot find Father has evidenced a settled purpose to relinquish his parental claim. Father did request a continuance to the case to enable him to seek legal representation. Father also attempted an ex parte communication with the Court, which the Court treated as a request for court-appointed legal representation.

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. Although, Father had Court ordered periods of partial physical custody Father made no effort to enforce those periods of custody. Father made no attempts to contact Mother or Child since May of 2009. Mother maintained the same phone number throughout this time. Father sent no letters or gifts. The Court cannot find any alleged "roadblocks" put into place by Mother that excuses the fact that TG completely lost out on having one of his two parents.

From May, 2009, to the date of the filing of the Petition in February 2014, over half of the child's life, Father has failed to show even a passive interest in his child. 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 child. The only father that the child knows is his step-father. The last time Father saw the child or had any contact with the child was May 2009 when he was less than three years old. There was no testimony from any party that there was a significant bond demonstrated between Father and the child at any time. Mother filed her Petition to Involuntarily Terminate Father's Rights almost five years after Father's last contact with the child. At the child's age, it is doubtful to this Court that he has any recollection of Father. 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 child.

Conclusions of Law

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

2. The Court finds that LD has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of TG will best be served by termination of BC'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 15th day of **July, 2014**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of BC, held on July 30, 2014, it is hereby **ORDERED** and **DECREED**:

- (1) That the parental rights of BC 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