

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

IN RE:	:	NO. 6457
	:	
ADOPTION OF	:	
BEC and	:	
NCC,	:	
Minor child	:	

OPINION AND ORDER

AND NOW, this 17th day of **April, 2015**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Father, DAC, in regard to the rights of his children, BEC and NCC on January 2, 2015. Father seeks to terminate the parental rights of the children's biological mother, SJC, hereinafter Mother, as a prerequisite to having the child adopted by his Wife, SLC. A hearing on the Petition was held on April 1, 2015. Father appeared at the hearing and was represented by Mark Taylor, Esquire. Mother appeared at the hearing and was represented by Ravi Marfatia, Esquire

Finding of Facts

1. BEC was born on August 17, 2005, in Lycoming County, Pennsylvania. NCC was born on January 23, 2007. The children currently reside with their Father, DAC and Step-Mother, SLC at 2421 State Route 184, Trout Run, Lycoming County, Pennsylvania.
2. The children's mother is SJC who was born on April 29, 1983.
3. Mother and Father were married in 2005.

4. Father has always maintained primary physical custody of the children. The parties separated in the spring of 2007 when BEC was less than 2 years of age and NCC was only a few months old.
5. The parties had a custody stipulation which was made an Order of Court on August 2, 2007, which granted Mother periods of partial custody every other weekend.
6. Mother's periods of custody were to be exercised at Maternal Grandmother's home.
7. Shortly after the parties separated Mother relocated to Florida
8. The children visited with their maternal grandmother until September 2013 when Father stopped the visits.
9. In the six-month period preceding Father filing his Petition for Termination, Mother did not call, text, see or write to her children.
10. Mother sent Father two texts in 2014. Father's cell phone number has remained unchanged for a period in excess of five years.
11. Father did not speak to Mother in 2013.
12. Father moved to his current address in May 2012, Maternal Grandmother has been to the home.
13. Mother last saw the children in January of 2011 when they visited Maternal Grandmother.
14. Mother has resided in the Lycoming County area since January of 2013.
15. Mother has provided no gifts, presents or necessities for the children in the six months preceding filing of the termination petition.

16. Father and Step-Mother began residing together in September 2010. Father and Step-Mother married April 6, 2013.

17. Mother saw the children and Step-Mother at a store parking lot in August of 2014. Mother did not speak to the children during the encounter.

Discussion

In order for the Court to find the statutory grounds for involuntary termination of parental rights the petitioner must prove through clear and convincing evidence that the grounds exist. ***In re: Adoption of Charles Ostrowski***, 324 Pa. Super, 471 A.2d 541, 542 (Pa. Super. 1984). “The standard of clear and convincing evidence is defined as testimony that is so ‘clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts in issue.’” ***In re A.S.***, 11 A.3d 473, 477 (Pa. Super. Ct. 2010) (quoting ***In re J.L.C. & J.R.C.***, 837 A.2d 1247, 1251 (Pa. Super. Ct. 2003).

Father 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 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 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: N.M.B., 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). Both the Pennsylvania Superior Court and the Pennsylvania Supreme Court have interpreted what evidencing a settled purpose at required in 23 Pa. C.S. § 2511 (a) (1) entails and the respective courts have held:

. . . . that the section has been interpreted as requiring a deliberate decision on the part of the parent to terminate the parental relationship and that parent must persist in that determination throughout the six-month period. . . . The term “settled purpose” implies finality of purpose In our efforts to determine if such a purpose was present, this Court has required an “affirmative indication of a positive intent” to sever the parental relationship before we have upheld an involuntary termination.

. . . .

Thus, this court has held that evidence of parental inaction and lack of interest for six months does not conclusively establish a settled purpose.

In re: Adoption of Charles Ostrowski at 219-20 (citing ***Adoption of Baby Girl Fleming***, 471 Pa. 73, 369 A.2d 1200, 1202 (Pa. 1977)).

In order to involuntarily terminate parental rights, the party seeking termination must prove by clear and convincing evidence the grounds for termination. ***Santosky v. Kramer***, 455 U.S. 745 (1982); ***In re Adoption of J.D.P.***, 471 A.2d 894, 895, (Pa. Super. Ct. 1984). “The Standard of clear and convincing evidence is defined as testimony that is so ‘clear, direct, weighty and convincing as to enable the trier of fact to

come to a clear conviction, without hesitation, of the truth of the precise facts in issue.”
In re A.S., 11 A.3d 473, 477 (Pa. Super. Ct. 2010) (quoting *In re J.L.C. & J.R.C.*, 837
A.2d 1247, 1251 (Pa. Super. Ct. 2003).

The Court finds as of the date of the Petition to Involuntary Terminate her parental rights, Mother has failed and refused to perform her parental duties for a period of time in excess of six (6) months. Mother had absolutely no contact with Father or the children for a period in excess of six months. Father maintained the same phone number for a period of five years. Mother had contacted Father on that cell phone number in the past. Mother sent no letters or gifts. The assertion that Mother was, at times, without her own cell phone does not alleviate her obligation to perform parental duties. Mother’s testimony regarding alleged “roadblocks” was not credible. Mother offered no credible evidence that either Father or Step-Mother prevented her contact with the children. Since the time of the parties’ separation in 2007, Mother’s only interaction with her children has been at her convenience and has been minimal, at best. Despite the parties having a Court Order, Mother at no time tried to exercise her physical custody rights or enforce the Order.

From approximately 2011 to the date of the filing of the Petition in January, 2015, almost half of the children’s lives, Mother has failed to show even a passive interest in her children. A parent has an affirmative duty to be part of a child’s life.

The Court does not find Mother has evidenced a settled purpose to relinquish parental rights as direct evidence was entered.

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, Mother does not have a bond with the children. She has shown almost no interest in the lives or welfare of her children for a period in excess of two (2) years. The only mother that the children know is Step-Mother. Step-Mother has performed a large portion of the parental duties. The children do not ask about Mother. Mother did not attempt to contact either child in 2013 or 2014. There was no testimony from any party that there was a bond demonstrated between the children and Mother at any time. There was no testimony that a bond exists between children and Mother after Mother's years of absence and disinterest. Further, termination of her rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Mother and the children.

Conclusions of Law

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

2. The Court finds that DAC has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of BEC and NCC will best be served by termination of SJC'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 17th day of **April, 2015**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of SJC, held on April 1, 2015, it is hereby ORDERED and DECREED:

- (1) That the parental rights of SJC 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 mother.

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