

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

IN RE: : **NO. 6442**
:
ADOPTION OF :
CMB, :
:
minor child :

AMENDED¹ OPINION AND ORDER

AND NOW, this 5th day of **June, 2015**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by the Mother, TLW, in regard to the rights of her child, CMB, on October 30, 2014. Mother seeks to terminate the parental rights of the biological father as a prerequisite to having the child adopted by her spouse, ACW. A hearing on the Petition was held on this date. Mother and ACW appeared at the hearing and were represented by Patricia Shipman, Esquire. None of the putative fathers, despite notice by publication, appeared at the time of the hearing.

Finding of Facts

1. CMB was born August 19, 2005, in Williamsport, Lycoming County, Pennsylvania.
2. TLW is the biological mother of CMB.
3. The father of the child is unknown.

¹ This Amended Opinion and Order is amended to correct a typographical error wherein Fathers were incorrectly referred to as "punitive fathers" rather than "putative fathers". This is the only change contained in this Amended Order.

4. At the time of child's conception, Mother was sexually active with several individuals. One of those individuals was JC. The other individuals were J (last name unknown), and C (last name unknown).

5. At the time of the child's conception, Mother was living in the Washington, D.C., area during the week and returning to her home in Williamsport, Pennsylvania, on the weekends.

6. After child's birth, JC had some contact with Mother and was aware that he was potentially the biological father of the child.

7. For approximately four months after child's birth, JC contacted Mother by telephone on almost a daily basis.

8. JC's telephone contact with Mother stopped abruptly and thereafter the telephone number that Mother had for him was disconnected.

9. Mother has not heard from JC since that time.

10. Mother did attempt to file for child support against JC; however, she did not have enough information regarding JC in order for her request to be processed.

11. JC was aware of Mother's parents' address in the Williamsport area. Her parents still reside at that address and would advise her if JC had attempted to make any contact with her. To date, JC has not attempted to make any contact with Mother through her parents.

12. Mother and ACW were married on December 18, 2012, in New York City, New York.

13. Mother and ACW began dating in July, 2010. ACW knew of CMB since that time.

14. In the six-month period preceding Mother filing a Petition for Termination of Parental Rights, none of the purported fathers called, texted, or in any way, attempted to contact the child.

15. Child has never met any of the putative fathers and has absolutely no relationship with any of them.

16. Child refers to ACW as “mama” and refers to her biological mother, TLW as “mom”.

17. Child read to the Court a very moving letter which she prepared in support of her adoption by ACW.

18. TLW and ACW have a loving relationship with child. They are clearly a family unit.

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 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 that as of the date of the filing of the Petition to Involuntarily Terminate the parental rights of the putative fathers, the putative fathers have failed and refused to perform their parental duties for a period of time in excess of six months. None of the putative fathers have had any contact with Mother or the child. Though JC had some contact with Mother until child was approximately four months of age, there has been absolutely no contact with child since that time. Child has never met or known any of the putative fathers.

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, the child has never met any of the putative fathers. In her nine years of life, she has never had contact with any of the putative fathers. The child has been in an in-tact family with Mother and ACW since July, 2010. Based upon the testimony presented including the letter read to the Court by the child, it is clear that there is a substantial bond that exists between child and ACW. A termination of the putative fathers’ parental rights will not destroy an existing, necessary and beneficial

relationship as there currently exists no relationship between the child and any of the putative fathers.

Conclusions of Law

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

2. The Court finds that TLW has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of CMB will best be served by termination of parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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IN RE: : **NO. 6442**
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DECREE

AND NOW, this 5th day of **June, 2015**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of the potential putative fathers JC. The other individuals were J (last name unknown), and C (last name unknown) held on June 1, 2015, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JC. The other individuals were J (last name unknown), and C (last name unknown) 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