

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

IN RE:	:	NO. 6444
	:	
ADOPTION OF	:	
GLS and	:	
EJS,	:	
minor children	:	

OPINION AND ORDER

AND NOW, this 29th day of **May, 2015**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, SLM, in regard to the rights of her children, GLS and EJS, on November 12, 2014. Mother seeks to terminate the parental rights of the children's biological father, JBS Jr., hereinafter Father, as a prerequisite to having the children adopted by her Husband, ECM. A hearing on the Petition was held on May 15, 2015. Mother appeared at the hearing and was represented by Melody Protasio, Esquire. Despite Notice, Father did not appear at the hearing.

Finding of Facts

1. GLS was born on June 5, 2000, in Carroll County, Maryland. EJS was born on July 27, 2003, in Carroll County, Maryland. The children currently reside with their Mother, SLM and Step-Father, ECM, at 390 Beech Street, South Williamsport, Lycoming County, Pennsylvania.
2. The children's father is JBS Jr.
3. Mother and Father were married at the time of the children's birth.

4. Mother has always maintained primary physical custody of the children. The parties separated in August of 2007, when GLS was 7 years old and EJS was 4 years old.

5. Since April of 2010, Father has had limited and sporadic contact with the children.

6. Father last exercised a period of physical custody in July of 2013. Upon Father's request, the children spent a week with Father in York, Pennsylvania. Father has not seen the children since July of 2013.

7. Father has occasionally sent son text messages. Often, months passed between communications.

8. In the six-month period preceding Mother filing this Petition for Termination, Father did not call, text, see or write to EJS. In the six-month period preceding Mother filing his Petition for Termination, Father did not see GLS, but did have approximately two contacts through text or phone.

9. Father has not asked to see the children since July of 2013. Mother's cell phone number has remained unchanged. Father is aware of the children's address.

10. Father has provided no gifts, presents or necessities for the children in the six months preceding filing of the termination petition.

11. Mother and Step-Father began a relationship in November of 2008. Mother and Step-Father married in excess of two-years ago.

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)).

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 as of the date of the Petition to Involuntary Terminate his parental rights, Father has failed and refused to perform his parental duties for a period of time in excess of six (6) months. Father had absolutely no contact with Mother or EJS for a period in excess of six months. Father contacted GLS approximately two times in the six months prior to the filing of the petition. Mother maintained the same phone number and address for a number of years. Father was aware of the phone number and address. Father sent no letters or gifts. Mother's testimony was credible. Father's very limited contact with GLS does not fulfill his obligation as a father.

From approximately 2010 to the date of the filing of the Petition in November, 2014, almost half of the children's lives, Father has failed to show even a passive interest in his children. A parent has an affirmative duty to be part of a child's life.

Alternatively, Mother avers Father's parental rights should be terminated under 23 Pa.C.S. §2511(a)(2), which provides the following grounds for termination:

(2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

Mother offered no evidence or argument on the grounds of Father's repeated and continued incapacity, abuse, neglect or refusal of the parent has

caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent. At all points during Father's absence, Mother has filled the role of parent. The children's needs were met by Mother. No case law was provided which stated that this specific ground for termination could be met while the children remain in the care of one parent.

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 children. He has not seen either child for over two (2) years. Since 2010, Father's visits with the children were infrequent and at his convenience. He has shown almost no interest in the lives or welfare of his children for a period in excess of two (2) years. The only father that the children currently know is Step-Father. Step-Father has performed a large portion of the parental duties. There was no testimony from any party that there was a bond demonstrated between the Father and children at any time. There was no testimony that a bond exists between children and Father after Father's years of absence and disinterest. Further, termination of his rights would not destroy an existing necessary and

beneficial relationship as there currently exists no relationship between Father and the children. The children are bonded to Step-Father.

Conclusions of Law

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

2. The Court finds that SLM has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of GLS and EJS will best be served by termination of JBS Jr.'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 29th day of **May, 2015**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JBS Jr., held on May 15, 2015, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JBS Jr. 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