

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

IN RE:	:	NO. 6440
	:	
ADOPTION OF	:	
HM and	:	
SM,	:	
minor children	:	

OPINION AND ORDER

AND NOW, this 15th day of **September, 2015**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Maternal Grandparents, JB and DB, in regard to the rights of their grandchildren, HM and SM on October 23, 2014. Grandparents seek to terminate the parental rights of the children's biological Mother, NB, as a prerequisite to having the children adopted by maternal grandfather, JB and his wife, DB. Father, MM has signed a consent to voluntary termination of his parental rights and adoption. A petition to confirm consent has not yet been filed pending this matter. A hearing on the Petition was held on September 10, 2015. At the time of the hearing, Mother was present with her counsel, Ravi Marfatia, Esquire and Grandparents were present and unrepresented. The Guardian Ad Litem, John Pietrovito, Esquire, was present on behalf of the children.

Finding of Facts

1. HM was born on July 1, 2003, and SM was born on May 22, 2004. The children currently reside with the Maternal Grandparents at 2606 State Home Road, Muncy, Lycoming County, Pennsylvania.

2. Mother maintained primary physical custody of the children from the time of their birth until 2013. In 2013, the children began to reside with Maternal Grandparents. Grandfather was granted emergency custody of the minor children on November 14, 2013. Grandfather alleged Mother was homeless, had Children and Youth involvement, was abusing heroin, and had abandoned the children.

3. On November 20, 2014, the Court granted Grandfather sole physical and legal custody by agreement of Mother and Grandfather.

4. The children's father is MM. Father is currently incarcerated and has signed a consent to voluntary termination of his parental rights and adoption.

5. Mother had little contact with the children from November, 2013, until the time of her incarceration in June, 2014.

6. Mother had no contact with the children in May, 2014. Mother attempted no contact.

7. Mother was incarcerated from June 5, 2014, until October 30, 2014.

8. During the time Mother was incarcerated, she sent one letter to SM.

9. Mother provided no gifts for the children in the six months prior to the filing of the Petition.

10. Mother has provided absolutely no financial support for the children since they entered Grandfather's custody in November of 2013.

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)).

Grandparents argue 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)).

Where a parent is incarcerated, the fact of incarceration does not, in itself, provide grounds for the termination of parental rights. However, a parent's responsibilities are not tolled during incarceration. The focus is on whether the parent utilized resources available while in prison to maintain a relationship with his or her child. An incarcerated parent is expected to utilize all available resources to foster a continuing close relationship with his or her children.

In re: N. M. B., 2004 PA Super 311, P19 (Pa. Super. Ct. 2004) (internal citations omitted).

Grandparents have met their burden by clear and convincing evidence that Mother has evidenced a deliberate decision to terminate her parental relationship, or has failed or refused to perform parental duties. Grandfather's testimony was credible. Mother had little contact with the children from November, 2013, until May, 2014. From at least May of 2014 through October of 2014, Mother had no contact with the minor children, except for one letter sent to SM only. Mother has failed to show even a passing interest in the children. Every parental decision regarding the children's education, physical or emotion health has been made by Grandparents for a period in excess of one year. One letter addressed to one of the children does not fulfill Mother's duty to her children. Mother has failed to use the resources available while in prison to maintain a relationship with her children. There is no evidence Mother attempted to contact the children by telephone or to seek Court intervention to continue contact. For a period in excess of the six months required by law, Mother has failed to perform

parental duties. Mother has provided absolutely no financial support for the children and has left Grandfather with the responsibility of financially raising the girls on his disability income. There is no evidence that Mother's failure to be a parent to her children was caused by any roadblocks created by grandparents.

"Once the statutory requirement for involuntary termination of parental rights has been established under subsection (a), the court must consider whether the child's needs and welfare will be met by termination pursuant to subsection (b)." *In re A.S.*, 11 A.3d 473, 483(Pa. Super. Ct. 2010). Grandfather admits the children do want to see their Mother at times, are physically affectionate with Mother, and are upset by her absence. The Guardian ad Litem offered his belief that there was a bond between Mother and the children. The children want their Mother in their life and feel they have a good relationship with her. The Court finds that there is a bond between the children and Mother which is necessary and beneficial. Even with Mother's complete failure to fulfill parental duties for a period in excess of one year, both children and Mother have a relationship which is necessary and beneficial to the children. See *In re T.S.M.*, 620 Pa. 602, 633 (Pa. 2013). Grandparents have failed to meet their burden by clear and convincing evidence that the children's needs and welfare would be met by termination in light of the bond between children and Mother. The Court would caution Mother that should Mother's behavior not improve dramatically, this bond could shift to one which is no longer beneficial to the children.

Conclusions of Law

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

2. The Court finds that JB and DB have failed to establish by clear and convincing evidence the NB's parental right should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(b) .

Based upon the foregoing, the petition for involuntary termination of parental rights of Mother, NB is hereby DENIED.

By the Court,

Joy Reynolds McCoy, Judge