

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

IN RE: : **NO. 6492**
:
ADP, :
:
minor child, :
:

ORDER

AND NOW, this 9th day of **September, 2016**, after a hearing held on August 29, 2016, in regard to the Petition for Involuntary Termination of Parental Rights filed on February 19, 2016, by Maternal Grandfather, GLS, and his wife, Maternal Grandmother, ALS, (collectively, "Petitioners" or "Grandparents"), with regard to the parental rights of JAP ("Father") to his daughter, ADP ("Child"). Petitioners seek to terminate Father's parental rights as a prerequisite to adopting the Child. A hearing was held on August 29, 2016, wherein Petitioners were present and represented by Denise L. Dieter, Esquire, and Father was present and represented by Mary Kilgus, Esquire. Child's biological Mother, AS, was present. Mother signed a Consent to Adoption on February 16, 2016, indicating her intent to voluntarily relinquish her rights to the Child. Also present was the Guardian Ad Litem, Patricia Shipman, Esquire.

Finding of Facts

1. ADP was born on February 19, 2009, in Gettysburg, Pennsylvania.
2. Child's Mother is AS, who resides in Milton, Pennsylvania.
3. Child's Father is JAP. Father resides in Fall River, Massachusetts.
4. Petitioners are GLS, who was born on September 27, 1959, and ALS, who was born on September 23, 1960.

5. Petitioners have resided at 3411 Middle Road, Jersey Shore, Pennsylvania 17740, since July 23, 2010. Petitioners resided in Gettysburg, Pennsylvania, at the time of Child's birth.

6. Petitioners have been married since June 6, 1981.

7. Petitioners are the maternal grandparents of Child.

8. Child has resided with Petitioners since birth. Mother has resided with Petitioners and Child at times throughout Child's life; however, Mother served a period of incarceration and also lived in Virginia and New York for periods of time and left Child in the care of Petitioners.

9. Father went to Gettysburg to visit with the Child a few days after her birth. The visit ended abruptly after an incident between Father and Mother's family and new boyfriend.

10. Father and Mother initially communicated about Child via telephone, but after sometime in 2010, their communication was mostly limited to Facebook.

11. On February 24, 2012, Petitioners, by and through their counsel, Denise L. Dieter, Esquire, filed a Petition to Intervene and for Shared Legal and Physical Custody of the Child. The Petition listed the Petitioners' address of 3411 Middle Road, Jersey Shore, Pennsylvania 17740.

12. A hearing on the Petition to Intervene was held on May 2, 2012. Petitioners were present and Father participated by telephone.

13. At the hearing, Father acknowledged that Petitioners had been the primary caretakers of Child, and that for the previous three years he had very little contact with Mother or Child. (Ct. Ex. 1).

14. By Order dated May 2, 2012, Petitioners were granted shared legal and primary physical custody of Child, without prejudice to Mother or Father to assert any interest of custody in the Child at any appropriate time. (Ct. Ex. 1).

15. Following the hearing on May 2, 2012, Petitioners did not hear from Father until October 13, 2012, when he showed up unannounced at their home at 3411 Middle Road, Jersey Shore, Pennsylvania 17740, at 8 a.m.

16. Petitioners accommodated Father's request to visit with Child and the parties met at a local restaurant. Father was introduced to Child as "Mr. Joe" and Child was told that he was a friend of her Mothers, pursuant to the recommendation of a counselor whose advice was sought by Petitioners. The visit lasted approximately 1.5 hours.

17. Per the agreement of the parties, Father had another visit with Child in November of 2012 at the same restaurant, under the same terms and conditions. The visit lasted approximately 1.5 hours.

18. Following the brief visit in November 2012, Petitioners had no further contact with Father until after the Petition for Involuntary Termination was filed.

19. Petitioners have lived at the same residence since moving to Pennsylvania in 2010. Their address has been on all court filings, including the Petition to Transfer Venue from Adams County to Lycoming County filed in December of 2011.

20. Petitioner ALS has had the same cell phone number for 12 or 13 years, and has had the same email address since approximately 1991.

21. Father's phone number has changed numerous times over the years. He has resided at several different addresses over the years but uses his mother's address to receive mail.

22. Father has never sent Child cards or gifts for birthdays or holidays, nor has he called her on her birthday or holidays.

23. Child calls Petitioners "Opa" and "Grammy."

24. Petitioners have established a parent/child relationship with Child and intend to adopt her so they can continue to financially and emotionally support her, as they have been doing birth.

Discussion

Petitioners 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 **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 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).

"[P]arental rights are not preserved... by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with his or her immediate physical and emotional needs."

In re Adoption of Godzak, 719 A.2d 365, 368 (Pa.Super.1998) (citation omitted).

The Court finds as of the date of the Petition to Involuntarily Terminate his parental rights, Father has failed to perform his parental duties for a period of time well in excess of six (6) months.

The Court must consider all the individual circumstances and explanations offered by the parent facing termination of his rights. Father offered several explanations for his absence from Child for nearly her whole life, with the exception of two separate 1.5 hour visits more than three years prior to the filing of the Petition to Involuntarily Terminate his rights. Father testified that he was unaware that Child was not living with and being cared for by Mother, yet at the hearing on the Petition to Intervene, Father indicated he "understood perfectly" when the Judge stated that the Child had been living in the Grandparents' household, even with Mother not being there, and that they really were the only caretakers for the Child. (Ct. Ex. 1). Father testified that, after the visit in November of 2012, he made no further attempts to arrange for visits with Child because he "felt unwanted" and that it would be "too hard" for him to not tell Child that he was her Father, or to hear her have to call him "Mr. Joe." However, it is undisputed that Petitioners were willing to accommodate his request to visit with the Child when he showed up on their doorstep unannounced, and then agreed to a second visit a month later. Father testified that he did not send cards or gifts to Child on her birthday or holidays because he was unaware of where she lived and was not going to

send things to an address he could not verify. However, Petitioners had listed their address on every document filed with the Court, in addition to having been physically present at their residence in October of 2012. Father testified that he had switched phones at some point and had lost the contact information for Petitioners. He also testified that his Google email account was down for a period of 18 months, and that he also had issues with his backup Yahoo email account. Father, however, was aware that Petitioners had been represented by the same attorney since 2011, and made no attempts to contact her to obtain the information he had lost.

A parent has an affirmative duty to be an active participant in a Child's life. This Court is convinced that Father failed to perform his parental duties for a period well in excess of six months prior to the filing of the Petition, and that he failed to utilize all available resources to preserve the parental relationship. Father did not file a complaint for custody following the hearing on the Petition to Intervene in 2012, despite being told twice by the judge that he could do so in order to institute a schedule under which he would exercise his parental rights and obligations, and establish and maintain a place of importance and consistency in Child's life. Father failed to contact Petitioners, despite acknowledging that he knew they were the primary caregivers for Child, for more than three years prior to the filing of the Petition to Involuntarily Terminate his Parental Rights. Instead of emailing, or calling, or simply showing up unannounced on their doorstep as he had done in October 2012 in order to establish and maintain a relationship with Child, Father chose to post messages on a Facebook page created in Child's name, apparently when Child was under the age of 4. This Court is unsure of

whether Mother or Father created the Facebook page, but Grandmother testified that Child does not have access to a computer or cell phone, and that she believes children do not belong on Facebook. The Court cannot fathom how Father would believe that posting messages on a Facebook page for a 7 year old would be preferable to contacting the people who were entrusted to care for Child or utilizing the Court system if he sought to exercise his parental rights.

Simply put, this Court did not find Father's testimony that he made repeated efforts to perform his parental duties credible. Similarly, this Court finds that the explanations offered by Father for his lack of involvement in Child's life did not overcome the fact that he was well aware of the fact that the Child lived with Petitioners, and that he knew how to get in touch with them by telephone, email, through their attorney, or by simply showing up at their home. He has failed to perform his parental duties for nearly all of Child's life and this Court finds that Petitioners have met their burden of proof under 23 Pa.C.S. §2511(a)(1). During the time that Father was failing to perform his parental duties, Petitioners provided Child with support, love, guidance, and financial and emotional stability and have maintained a place of importance and consistency in her life.

As the statutory grounds for termination have been met, the Court must next 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)).

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, aside from the few hours spent with Father shortly after birth, the Child has physically seen or interacted with Father approximately 3 hours in seven years. There is not a significant bond between Father and Child. In fact, there is no bond between Father and Child, as Child is unaware of whom her Father is due to the lack of involvement in her life. When questioned by the Court, Grandmother testified

that Child does not know her Father, but does know who her Mother is and has never been curious about the identity of her Father because many of Child's friends are also living in non-traditional family settings. Termination of Father's rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and Child. Child is bonded to Petitioners, evidenced by the fact that she has lived with them since birth. It is evident to the Court that Petitioners love and care for Child as if she is their own. Petitioners have been solely responsible for Child's medical care and education. While in their care, Child has excelled in school, participated in soccer and softball, has been introduced to both the Catholic and the Lutheran faiths, and received appropriate medical care and speech therapy. Petitioners have stepped in and assumed the parental responsibility that Father failed to perform throughout Child's life.

The Court finds that Petitioners are very invested in Child's life and, together they provide Child with a safe and comfortable home, financial security, and the love and emotional support she deserves. Petitioners have the support of Mother, who testified that Child is thriving and happy and that Petitioners provide a supportive and nurturing environment for Child. The Court is satisfied that that termination of Father's parental rights and allowing the adoption of Child by Petitioners to proceed is in the best interest of the Child.

Conclusions of Law

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

2. The Court finds that GLS and ALS have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of ADP will best be served by termination of JAP's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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

IN RE: : **NO. 6492**
:
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DECREE

AND NOW, this **9th** day of **September, 2016**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JAP, held on August 29, 2016, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JAP 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. 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