

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

IN RE: : **NO. 6508**
:
JAN, :
:
: **minor child,** :
:

OPINION AND ORDER

AND NOW, this 14th day of **November, 2016**, before the Court is a Petition for Involuntary Termination of Parental Rights filed on May 16, 2016, by Mother, EH (“Mother”), in regard to the rights of her child, JAN (“Child”). Mother seeks to terminate the parental rights of the child’s biological father, DSN (“Father”), as a prerequisite to having the child adopted by her husband, BH (“Husband”). A hearing on the Petition for Involuntary Termination of Parental Rights was held on November 9, 2016. Mother, EH, and her husband, BH, were present with their counsel, Schawne K. Kilgus, Esquire. Father, DSN, though properly served with notice of the hearing, failed to appear.

Finding of Facts

1. JAN was born on January 1, 2004. She currently resides with her mother, EH, step-father, BH, and half-sibling at 53 North Second Street, Hughesville, PA 17737. EH and BH were married on July 7, 2009.
2. The child’s biological father is DSN who resides at 1170 Village Road, Muncy, PA 17756.
3. From the time of the child’s birth until the approximate age of one and a half, the child resided with Mother and Father.

4. There has never been a custody order entered regarding the child between Mother and Father.

5. After the parties separated, Father would, at times, see the child on a consistent every-other-week basis and, at times, would go for extended periods up to six months without having any contact with the child.

6. Father last had physical contact with the child in July, 2015.

7. During Father's last visit in July of 2015, an altercation occurred between Father and his girlfriend in the presence of the child where Father was verbally and physically abusive to his girlfriend.

8. The child was significantly upset regarding the incident that had occurred between her Father and his girlfriend and relayed the incident to Mother.

9. Mother spoke with Father concerning the incident.

10. Since the incident in July, 2015, Father has not requested to see or have any time with the child.

11. Father has called Mother on four or five occasions since July, 2015; however, he has never asked about the child during these phone conversations. Instead he was calling Mother about random things concerning himself.

12. Father has provided no Christmas or birthday gifts for the child since the parties' separation except during a Christmas when the child was six years old and spent time at Christmas at Father's home. He gave her several gifts at that time.

13. Since the child was one and a half years old, Father has not attended any medical appointments or school conferences for the child.

14. Father is currently Court-ordered to pay child support, but is delinquent approximately \$2,000.00 in support and there is currently a bench warrant issued due to his failure to appear at a contempt hearing.

15. Besides the Court-ordered child support, Father has never provided financially for the child since the parties' separation.

16. Mother has resided at the same residence and has had the same cell phone number since prior to Father's last contact with the child in July, 2015.

17. The minor child has her own cell phone, and Father has her cell phone number. Father has not contacted the child on her cell phone since July, 2015.

18. At no time has Mother refused any phone calls, correspondence or presents from Father directed to the child.

19. The child has a half-brother, BN (she and Blaine share the same father). The child keeps in touch with her half-brother, BN, and Mother has indicated that this would continue despite the termination of Father's parental rights. BN currently does not have any contact with Father himself.

20. The child wishes to be adopted by her step-father, BH. She refers to him as "dad" and wishes to have Hubler as her last name.

21. The child currently does not have a bond with Father.

22. The child is closely bonded with her step-father, BH.

Discussion

Mother and Husband 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 Involuntary Terminate his parental rights, Father has failed to perform his parental duties for a period of time in excess of six (6) months.

A parent has an affirmative duty to be part of a child's life. Mother testified that from birth until age 1 ½, Child resided with both Mother and Father, but that after Mother and Father separated, Father's contact with Child alternated between consistent and sporadic. Father's last contact with the Child was in July of 2015. Father, despite having Child's cell phone number, has not contacted Child since July of 2015. With the exception of one year, Father has not sent the Child cards or gifts on her birthday or Christmas since she was approximately 1 ½ years old. Father is in arrears on his

support obligation, and has not attended any medical appointments or school events since Mother and Father stopped residing together.

Mother testified that she has not done anything to prevent Father from exercising his rights, privileges, or obligations as a parent to the Child. Mother and Child have lived in the same residence since Father's last contact with Child in July of 2015, and Mother has had the same phone number since Father's last contact with Child. In fact, Mother testified that Father has contacted her by telephone on four or five occasions since his last contact with Child in July of 2015, but did not enquire about Child during any of the conversations. There have been no significant obstacles or roadblocks put in place by Mother which would have interfered with Father's ability to perform his parental duties. It appears to this Court that Mother and Husband have established that Father has simply evidenced a settled purpose of relinquishing parental claim to the Child and has refused or failed to perform parental duties for a period in excess of six months. This settled purpose of relinquishment is especially apparent given the fact that, despite being properly served, Father failed to appear for the hearing on the Petition for Involuntary Termination.

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, there is not a significant bond between Father and Child. Child knows Mother’s Husband as her father, and their bond is evidenced by the fact that she calls him “Dad.” Termination of Father’s rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and the Child. Prior to Father’s last contact with Child in July of 2015, he maintained a relationship with Child that can be characterized as inconsistent at best.

Child is bonded to Mother's Husband, evidenced by the fact that Husband helps tend to her daily needs in conjunction with Mother. It is evident to the Court that Husband loves and cares for Child and treats her as his own. Husband has stepped in and assumed the parental responsibility that Father has evidenced a settled purpose of relinquishing.

The Court finds that Husband is very invested in Child's life and, together with Mother, provides Child with a safe and comfortable home, financial security, and the love and emotional support she deserves. The Court is satisfied that both Mother and Husband understand the potential consequences of allowing Husband to adopt Child, and that termination of Father's parental rights and allowing the adoption by Husband to proceed is in the best interest of the Child.

Conclusions of Law

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

2. The Court finds that EH and BH have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of JAN will best be served by termination of DSN's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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ORPHANS' COURT DIVISION**

IN RE: : **NO. 6508**
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DECREE

AND NOW, this 14th day of **November, 2016**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of DSN, held on November 9, 2016, it is hereby ORDERED and DECREED:

- (1) That the parental rights of DSN 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