

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

IN RE: : **NO.**
 :
KR, :
 :
 minor child, :

OPINION AND ORDER

AND NOW, this 2nd day of **December, 2016**, before the Court is a Petition for Involuntary Termination of Parental Rights filed on June 8, 2016, by Mother, JG ("Mother"), in regard to the rights of her child, KR ("Child"). Mother seeks to terminate the parental rights of the child's biological father, AR ("Father"), as a prerequisite to having the child adopted by her husband, CG ("Husband"). A pretrial conference was held on September 2, 2016, at which time Father, though personally served, failed to appear. An Order was entered indicating that if Father wished to participate in the Involuntary Termination hearing and have counsel appointed for him, he was to advise the Court, in writing, by October 15, 2016. Father did not reach out to this Court to request counsel be appointed to represent him in this matter. A hearing on the Petition for Involuntary Termination of Parental Rights was held on December 1, 2016. Mother, JG, and her husband, CG, were present with their counsel, Jennifer B. Ayers, Esquire. Father, AR, though properly served with notice of the hearing, failed to appear.

Finding of Facts

1. KR was born on July 1, 2014. He currently resides with his mother, JG; stepfather, CG; and sister at 1021 Whitehall Road, Danville, Pennsylvania.

2. The child's biological father is AR who resides at 75 Orchard Avenue, Hughesville, Pennsylvania.
3. Mother and Father were married but separated at the time of Child's birth.
4. Mother and Father have another child, LR. There is a current custody Order regarding LR. Father sees LR one or two times per month.
5. There has never been a custody order entered between Mother and Father regarding KR.
6. Mother testified that Father indicated he was uncomfortable exercising periods of custody with Child before he reached 2 or 3 years old.
7. Father has exercised custody of Child approximately 4 times during Child's life.
8. Father last had physical contact with the Child on April 12, 2015.
9. Both Mother and Father's current girlfriend have encouraged Father to exercise periods of custody with Child.
10. On occasion, Child is in the car with Mother during custody exchanges of LR. Father has never requested to exercise custody of Child during those exchanges.
11. Father has provided no Christmas or birthday gifts for the Child.
12. Father does not pay child support for the Child and has never provided financially for the Child.
13. At no time has Mother refused any phone calls, correspondence or requests of Father to spend time with the Child.
14. The child knows Husband as his father. He refers to him as "Daddy."

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

22. The child is closely bonded with his stepfather.

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 she and Father were married, but separated, at the time of Child's birth. She further

testified that she and Father have another child together, for whom there is a current custody Order, and that Father does exercise periods of custody of that child. Mother testified that Father indicated that he did not want to have periods of custody with this Child until he was 2 or 3 years old because he was “uncomfortable.” Mother estimated that Father has seen or spent time with Child on approximately 4 occasions since Child’s birth. Father’s last contact with the Child was on April 12, 2015. Father, despite having regular contact with his other child, has never requested to spend time with the child who is the subject of the Petition. Father has never sent the Child cards or gifts on his birthday or Christmas. Father does not financially support the Child, through court-ordered child support or otherwise.

Mother testified that she has not done anything to prevent Father from exercising his rights, privileges, or obligations as a parent to the Child. To the contrary, Mother testified that both she and Father’s girlfriend have attempted and encouraged Father to develop a relationship with the Child and Father has never taken advantage of the offers. Father has never filed any actions to establish periods of custody of Child. In fact, Mother testified that Child is sometimes present at the custody exchanges of Mother and Father’s older child, and Father has never requested to take Child at that time. 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 his father, and their bond is evidenced by the fact that he calls him "Daddy." 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, even though Mother has provided ample opportunity for Father to develop a relationship with Child. Child is bonded to Mother's husband, who has lived with Child since he was approximately six months old, and who is the only father-figure the Child would know. It is evident to the Court that Husband loves and cares for Child and treats him as his own. Husband has stepped in and assumed the parental responsibility that Father has evidenced a settled purpose of relinquishing.

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 JG and CG have established by clear and convincing evidence that AR's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that JG and CG have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of KR will best be served by termination of AR'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. 6511**
: :
KR, : :
: :
minor child, : :

DECREE

AND NOW, this 2nd day of **December, 2016**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of AR, held on December 1, 2016, it is hereby ORDERED and DECREED:

- (1) That the parental rights of AR 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