

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

IN RE: : **NO. 6483**
 :
LW, :
 :
 minor child, :

ORDER

AND NOW, this 18th day of **March, 2016**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, KH, in regard to the rights of her child, LW, on October 30, 2016. Mother seeks to terminate the parental rights of the child's biological Father, AW, as a prerequisite to having the child adopted by her Husband, DH. A hearing on the Petition was held on February 23, 2016, at which time Mother and her Husband were present with their counsel, Richard Callahan, Esquire; Father was present via Polycom with his counsel, Ravi Marfatia, Esquire; and the Guardian Ad Litem, Angela Lovecchio, Esquire, was present on behalf of the child. The child, LW, was also present but was not present during testimony. The Court spoke with the child *in camera*.

Findings of Fact

1. LW was born on June 17, 2004, in Pennsylvania. She currently resides with her Mother, KH, and Step-Father, DH, at 150 Mill Street, Trout Run, Lycoming County, Pennsylvania.

2. The child's mother is KH who was born October 5, 1976, and is currently 39 years of age. Mother married DH on August 5, 2011.

3. The child's father is AW. Father is currently incarcerated in SCI-Albion as a result of a Sentence Order entered February 12, 2010, for Count 1 Involuntary Deviate Sexual Intercourse, a felony of the first degree; Count 9 Involuntary Deviate Sexual Intercourse, a felony of the first degree; Count 4 Indecent Assault which merged with Count 11 Indecent Assault; Count 5 Indecent Assault; and Count 6 Endangering the Welfare of a Child. It is noted that the victim was Mother's son.

4. Mother and Father were never married.

5. Mother and Father were together off and on for five years prior to the child's birth on June 17, 2004.

6. Mother testified that at the time of LW's birth, she and Father were not together and were never together as a couple after her birth.

7. Father, however, testified that he and Mother lived with his mother at the time of LW's birth until June or July, 2005, when Father was sent to state prison.

8. From the time of LW's birth on June 17, 2004, until Father went to state prison in June or July of 2005, Father indicated he may have spent a couple of months in the County Prison.

9. During this year, Father spent one weekend with LW where he was solely responsible for her care.

10. Father testified that he received a letter from Mother on January 14, 2006, in which she indicated she was breaking up with him and had a new boyfriend.

11. At some point in 2006, Father was paroled to a halfway house in Harrisburg. At that time, he would call Mother's home weekly or every other week to speak with LW.

12. Father testified that the last time he saw his daughter, LW, was in 2006, when she was approximately 2 ½ years old, at which time Mother brought the child to Father's grandmother's funeral. Father spent the day with her on that day.

13. Father was again incarcerated on October 5, 2006, for a parole violation and served a six-month sentence to participate in a back-on-track program at SCI-Albion.

14. In 2007, Father received a letter from Mother where she indicated she was upset with Father because he had almost made it home, but couldn't stay out of trouble and wound up being incarcerated again. In the letter, Mother indicated that she was not going to allow Father to see LW because he could not stay out of trouble.

15. At some point in 2008, Father was released from the six-month probation violation sentence.

16. It is unclear on what date Father was actually charged with the crimes against Mother's son. He was incarcerated for the crimes as of

October 28, 2009, and remained incarcerated until the time of his sentencing on February 12, 2010.

17. Father has continuously been incarcerated since October 28, 2009, and is currently housed at SCI-Albion.

18. Father's aggregate sentence for the crimes on which he was convicted is 14 years to 28 years, plus an additional consecutive 4 years of probation.

19. At his minimum release date, LW will be 21 years old.

20. Mother married DH on August 5, 2011.

21. LW refers to DH as "daddy". LW refers to her Father, AW, as "bio dad".

22. DH has been involved in LW's life since she was approximately one year of age.

23. LW has a close bond with DH.

24. When questioned by the Court, LW stated to the Court "I really want it". She further stated "because then my last name will be changed and then I won't have to keep being called LW".

Discussion

Mother asserts that the grounds for termination of the Father's parental rights may be found in 23 Pa.C.S. §2511(a)(1), which reads:

§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 evidence 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 §2511(a)(1) where a parent demonstrates a settled purpose of relinquishing parent claim to a child **or** fails to perform parental duties for at least six months prior to filing for the termination petition. In the Interest of C.S., 761 A.2d 1197, 1201 (Pa. Super. Ct. 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. Ct. 2004), appeal denied, 872 A.2d 1200 (2005) citing In Re: D.J.S., 737 A.2d 283, 286 (Pa. Super. Ct. 1999).

In order to determine 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 characterizes 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).

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).

The Court finds that 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 in excess of six months, in fact, in excess of five years. Father has spent the majority of his daughter’s life incarcerated. He, in fact, has not even seen his daughter since she was 2 ½ years old. Father has been incarcerated off and on a majority of the child’s life. He has been continuously

incarcerated since October 28, 2009, when his daughter was 5 years of age. Under his current sentence, Father will remain incarcerated at least until his daughter's 21st birthday. Father has made no efforts whatsoever to maintain any type of relationship with his child since at least 2009. Though incarceration alone is not a basis for which to terminate a parent's parental rights, the Court finds that Father has done nothing at least since his continuous incarceration in 2009 to maintain any type of relationship with his daughter.

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 his daughter. The only father that the child has known is her stepfather. The last time Father saw the child, she was 2 ½ years of age. It is unclear from the testimony presented if Father even had any type of significant bond with the child at that time. Clearly, however, there has been no bond with the child since that date. Mother filed her Petition to Involuntary Terminate Father's rights almost 9 years after Father's last physical custody with the child. At the child's age, it is doubtful to this Court that she has any real recollection of Father, but that her recollection is only based upon what people have told her. The child is closely bonded with her stepfather and he has been involved in her life since she was approximately one year of age. The child desires to be adopted by her stepfather and wishes to have his last name.

It is clear that Father has no bond with the child at this point and time and that the child has no bond with Father. Further, termination of Father's parental rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and child.

Conclusions of Law

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

2. The Court finds that KH has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of LW will best be served by termination of AW's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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IN RE: : NO. 6483
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DECREE

AND NOW, this 18th day of **March, 2016**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of AW, held on February 23, 2016, it is hereby ORDERED and DECREED:

- (1) That the parental rights of AW 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

JRM/jrr