

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

IN RE: : **NO. 6515**
:
NW, :
:
a minor child, :
:

OPINION AND ORDER

AND NOW, this 19th day of **December, 2016**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, CB, on or about July 12, 2016, in regard to the rights of her child, NW, born November 16, 2009. Mother seeks to terminate the parental rights of the child's biological Father, JW, as a prerequisite to having the child adopted by her husband, DB. A hearing on the Petition was held on this date. Father did not appear at the time set for the hearing. Father also failed to appear at the Pre-Trial Conference held on September 2, 2016. An Order was entered by this Court on September 7, 2016, advising JW that if he wished to participate in the hearing on the termination of his parental rights and have counsel appointed for him, he must advise the Court in writing by November 1, 2016. Father never had contact with the Court concerning his participation in the hearing or the appointment of counsel on his behalf. The Court finds that Father had proper notice of the hearing. Mother, CB, and Petitioner, DB, her husband, appeared with their counsel, Meghan Young, Esquire.

Finding of Facts

1. NW was born on November 16, 2009, in Williamsport, Pennsylvania. The child currently resides with his Mother, CB, and Step-Father, DB, at 45 Back Street, Lot 27, Montoursville, Lycoming County, Pennsylvania. The child's Mother is CB, who was born December 21, 1993, in Williamsport, Lycoming County, Pennsylvania. She is currently married to DB, who was born September 4, 1989, in Williamsport, Lycoming County, Pennsylvania. CB and DB were married on July 18, 2015.

2. The child's Father is JW. Father resides at C Drive, Williamsport, Lycoming County, Pennsylvania. At the time of the child's birth, Father was incarcerated for corruption of a minor and statutory rape. Mother was the victim.

3. Mother was 15 years of age and Father was 22 years of age at the time that the child was conceived.

4. Father was released from incarceration in May, 2011. From May through July, 2011, Father saw the child on three occasions.

5. From July, 2011, through May, 2012, Father had no contact with the child.

6. In May, 2012, Father approached the maternal grandfather and indicated that he wished to have contact with his son.

7. Due to the length of time that Father had not had contact with the child, Mother was reluctant to allow the relationship; however, she did allow Father to begin to have contact with the child in her home.

8. In late Summer, early Fall, 2012, the parties reverted back to their prior Court Order which provided for Father to have physical custody every other weekend.

9. Between the time the child was 2 ½ and 4 ½ years of age, Father had custody of the child approximately every other weekend. There were times, however, when Father's visits were sporadic and towards the end, Father's contact with the child dwindled down to the point where he only saw the child when he wanted.

10. August 10, 2014, is the last time that Father had any contact with the child.

11. An incident occurred in August, 2014, where Mother discovered the child was acting out sexually towards his younger brother.

12. Mother contacted Children & Youth and was instructed to take the child to the emergency room.

13. The concern was raised by medical professionals that perhaps NW had suffered from sexual abuse.

14. The information concerning NW's medical exam was relayed to Father's wife, and she was advised that there was concern that there had been sexual abuse against the child.

15. After this incident, Father stopped all contact with the child.

16. Mother has lived at the same location for the past 5 ½ years and Father has been to that location.

17. Mother has had the same telephone number since prior to Father's last visit with the child. Father has contacted Mother at that number.

18. At no time since August 10, 2014, has Father attempted to contact Mother in regard to the child.

19. Since August 10, 2014, Father has not sent any letters, gifts or provided any financial support for the child.

20. During the Summer of 2015, Father lived directly across the street from Mother and the child with his uncle. He was there for approximately four months spending three to four nights a week at the location. During the time that he was directly across the street from his son, Father made no contact with the child despite the child being outside at times when Father could have easily made contact.

21. The child is closely bonded with DB, his step-father.

22. The child refers to DB as "father".

23. DB describes his relationship with the child as follows: "in essence, dad, to the fullest meaning of the word".

24. The child has no relationship or bond with his Father, at this point in time, in light of his current age, and the significant period of time that has lapsed since he last saw his Father.

25. The child does not ask about his father.

26. The child resides with his three half-siblings: WB, age 4½, BB, age 3½; and HB, age 10 months.

Discussion

Mother argues 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).

The Court finds as of the date of the Petition to Involuntary Terminate his parental rights, the Father has evidenced a settled purpose of relinquishing parental claim to a Child and has failed to perform his parental duties for a period well in excess of six (6) months. Father has failed to have any contact with Mother or Child since August, 2014. Father has not provided support nor sent gifts or cards.

Father has failed to show even a passive interest in his child during the past 2 ½ years. A parent has an affirmative duty to be part of a child's life; Father has not met this affirmative duty. The Court finds that there have been no barriers placed in Father's path to stop his relationship with his son. In fact, even when he lived directly across the street from his son, Father made no attempt at contact.

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, it is clear that Father has no bond with the child. The only consistent father that the child knows is his step-father. Father has not seen the child since August, 2014, when the child was four years old. Further, termination of his rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and the child. The child refers to DB, his step-father, as his father.

Conclusions of Law

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

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

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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DECREE

AND NOW, this 19th day of **December, 2016**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JW, held on this date, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JW 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 17105-17111
Telephone: 1-800-227-0225

Medical history information forms may also be obtained locally by contacting one of the following agencies:

1. County 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