

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

IN RE: : **NO. 6484**
 :
OGS, :
KKS, :
Minors, :

OPINION AND ORDER

AND NOW, this 29th day of **June, 2016**, before the Court is a Petition for Involuntary Termination of Parental Rights filed on November 17, 2015, by Mother, KS ("Mother"), and her husband, JS ("Husband"), with regard to the rights of Mother's children, OGS and KKS ("Children"). Mother and Husband seek to terminate the parental rights of the children's biological father, JS ("Father"), as a prerequisite to having the children adopted by Husband. A Hearing on the Petition was held on June 22, 2016, wherein Mother was present and represented by Christina L. Dinges, Esquire, and Father, despite being properly served with notice of the time, date, and location of the hearing, did not appear. Also present was Patricia Shipman, Esquire, who was appointed as Guardian Ad Litem for the Children by Order dated April 1, 2016.

Finding of Facts

1. OGS and KKS were born on October 27, 2013.
2. Children's Mother is KS, who was born on April 6, 1977. She currently resides at 122 Hillside Drive, Williamsport, Pennsylvania 17701, with her Husband and the Children.

3. Husband is JS, who was born on September 22, 1965, and resides at 122 Hillside Drive, Williamsport, Pennsylvania 17701, with Mother and the Children.
4. Mother and Husband have been married since September 26, 2015.
5. Children's Father is JS, who resides at 5413 Burlington Turnpike, Towanda, Pennsylvania 18848.
6. Father has not seen or had contact with the Children since July of 2014.
7. Father has not sent any cards or letters to the Children, nor has he sent gifts on their birthdays or holidays.
8. Father has not paid support for the Children, nor has he made any inquiries as to their health or well-being.
9. Mother resides in the same residence that she did at the time of Father's last contact with the Children, and her phone number has not changed since that time.
10. Both Children are in good health.
11. Children call Husband "Daddy" or "Dad." They would not recognize Father, due to their age and the length of time that has passed since their last contact with him.

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 Father's last contact with the Children was on July 4, 2014, when they were approximately nine months old. Father has not sent the Children cards or gifts on their birthdays or holidays, has not paid any support for them, and has not even made inquiries into their health and well-being, despite contacting Mother occasionally for other reasons. Mother testified that she has not done anything to prevent Father from exercising his rights, privileges, or obligations as a parent to the Children. As she resides in the same home and maintains the same phone number she did at the time of Father's last contact with the Children, there have been no significant obstacles or roadblocks put in place by Mother which would have interfered with his 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 Children 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)). 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, given the Children's young age, and the fact that Father has not seen or interacted with them in nearly two years, there is not a significant bond between Father and Children. Children know Husband as their father, calling him "Dad" or "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 Children. Children are bonded to Husband, evidenced by the fact that Husband lives with them and tends to their daily needs in conjunction with Mother. It is evident to the Court that Husband loves and cares for Children and treats them 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 Children's life and, together with Mother, provides Children with a safe and comfortable home, financial security, and the love and emotional support they deserve. The Guardian Ad Litem testified that she met with Mother and Husband in her office and also made a home visit, and that they shared a beautiful home and created a loving family atmosphere with the Children. The Court is satisfied that both Mother and Husband understand the potential consequences of allowing Husband to adopt Children, and that termination of Father's parental rights and allowing the adoption by Husband to proceed is in the best interest of the Children.

Conclusions of Law

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

2. The Court finds that JS and KS have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of OGS and KKS will best be served by termination of JS'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 29th day of **June, 2016**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JS, held on June 22, 2016, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JS be, and hereby are, terminated as to the children above-named;
- (2) That the welfare of the children will be promoted by adoption; that all requirements of the Adoption Act have been met; that the children 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