

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

IN RE: : **NO. 6475**
: :
BGR, : :
: :
a minor child, : :

OPINION AND ORDER

AND NOW, this 21st day of **April, 2017**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Petitioner, JMA, on or about November 22, 2016. Said petition is in regard to BGR a/k/a KHA, born May 9, 2015. Petitioner seeks to terminate the parental rights of the child's biological Father, CR, Sr. A hearing on the Petition was held on April 7, 2017, at which time Petitioner was present with her counsel, Michael H. Collins, Esquire. Father did not appear at the time set for the hearing. Father also failed to appear at the Pre-Trial Conference held on February 2, 2017. An Order was entered by this Court on February 2, 2017, advising CR, Sr., 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 March 1, 2017. 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, LR, signed a Consent to Adoption on May 26, 2015, and was not present for the hearing on April 7, 2017.

Finding of Facts

1. BGR a/k/a KHA ("Child") was born on May 9, 2015, in Bloomsburg, Pennsylvania. The child currently resides with Petitioner, JMA ("Petitioner"), at 2100

Wheatland Avenue, Williamsport, Pennsylvania. Child has lived with Petitioner at this address since Child's release from the hospital following her birth.

2. The Child's Mother is LR ("Mother"), who resides at 438 Railroad Street, Bloomsburg, Pennsylvania.

3. The Child's Father is CR, Sr. ("Father"). Father resides at 438 Railroad Street, Bloomsburg, Pennsylvania.

4. Petitioner testified that Mother contacted her when she was approximately four months pregnant and asked her if she would be willing to adopt Child. Petitioner attended Mother's prenatal appointments with Mother and Father.

5. Mother and Father were not married at the time of Child's birth. Father was incarcerated at the Lycoming County Prison at the time of Child's birth.

6. Petitioner was present at the hospital for the Child's birth. When the Child was discharged from the hospital, she went to the Petitioner's home in Williamsport, Lycoming County, where she has remained since that time.

7. A Report of Intention to Adopt was filed on July 7, 2015.

8. A home study was completed by NHS Human Services on September 21, 2016.

9. Petitioner is presently married to LJA. However, the couple separated in August of 2016, and intend to file for divorce. Luke Anderson signed a notarized statement on March 1, 2017, indicating that he will no longer be joining in the adoption. Said statement was filed on April 7, 2017.

10. Mother signed a Consent to Adoption on May 26, 2015. A Petition to Confirm Consent was filed on November 22, 2016, simultaneously with the Petition for Involuntary Termination of Father's Parental Rights.

11. Father was out of prison and living with Mother in December of 2016 when he was served with the Petition for Involuntary Termination.

12. Mother is friends with Petitioner on Facebook, and both Mother and Father would have the means to contact Mother if they desired.

13. Petitioner testified that she has not had any contact with either Mother or Father since at least December 2016. Neither Mother nor Father has given any verbal or written indication to Petitioner that they have changed their minds regarding the adoption.

14. Petitioner has never received any type of letters, cards, or gifts for the Child from Father.

15. Petitioner has never put up obstacles or done anything that would prevent Father from establishing or maintaining a relationship with the Child.

16. Child does not know Father and has no relationship with him.

Discussion

Petitioner argues that Father has not fulfilled his parental obligations in any way and it is in the best interest of the Child that the parental rights of Father be terminated in order that Petitioner can proceed with the adoption. 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). In the instant case, Father has demonstrated both. When determining whether to terminate the rights of a parent, 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, Father has evidenced both a settled purpose of relinquishing parental claim to the Child and has failed to perform his parental duties for a period well in excess of six (6) months. Although Father was incarcerated at the time of Child's birth, he made no efforts to communicate with Petitioner while he was incarcerated. Upon his release from incarceration, Father made no attempts to see the Child or to perform his parental obligations in any manner.

A parent has an affirmative duty to be part of a child's life; Father has not met this affirmative duty. Father has shown no interest in the Child since her birth. The Court finds that Petitioner placed no obstacles in Father's path which would prevent him from exercising his parental rights, privileges, and obligations with regard to Child. Father made no efforts to contact Petitioner since the Child's birth. Father has sent no letters, cards, or gifts to the Child for birthdays or holidays, and has made no inquiries about the Child's physical or emotional well-being. This Court finds that pursuant to

23 Pa.C.S. §2511(a)(1), Petitioner has 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 far 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 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. Father has never even met the Child. 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. Child is bonded to Petitioner, with whom she has lived since birth, and who is the only parental figure the Child would know. It is evident to the Court that Petitioner loves and cares for the Child, and is able to financially and emotionally support her. Petitioner has stepped in and provided the love and support Child needs and has assumed the parental responsibility that Father has evidenced a settled purpose of relinquishing.

Although Petitioner's husband is no longer joining in the adoption, the Court is satisfied that Petitioner is able to financially support the Child on her own, and that termination of Father's parental rights and allowing the adoption by Petitioner to proceed is in the best interest of the Child.

Conclusions of Law

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

2. The Court finds that JMA has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of BGR a/k/a KHA will best be served by termination of CR, Sr.'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. 6475**
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DECREE

AND NOW, this **21st** day of **April, 2017**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of CR, Sr., held on April 7, 2017, it is hereby ORDERED and DECREED:

- (1) That the parental rights of CR, Sr. 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