

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

IN RE: : **NO. 6510**
:
BMP, :
:
a minor child, :
:

OPINION AND ORDER

AND NOW, this 6th day of **January, 2017**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, BP, and her paramour, GS, on or about June 3, 2016. Said petition is in regard to the rights of BP's child, BMP, born November 26, 2010. Mother and her paramour seek to terminate the parental rights of the child's biological Father, BJW, as a prerequisite to having the child adopted by Mother's paramour. A hearing on the Petition was held on January 4, 2016. 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 21, 2016, advising BJW 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, BP, and paramour, GS, appeared with their counsel, Meghan Young, Esquire.

Finding of Facts

1. BMP ("Child") was born on November 26, 2010, in the State of Delaware. The child currently resides with her Mother, BP ("Mother"), and Mother's paramour, GS

("Paramour"), at 253 Main Street, Salladasburg, Lycoming County, Pennsylvania.

Mother and Paramour have lived at this address with the Child since April 2012.

2. The Child's Father is BJW ("Father"). Father resides at 14 Linden Place, Unit #2, Dedham, Massachusetts.

3. Mother and Father resided together in Delaware until June of 2011. A custody Order was entered in Sussex County, Delaware, granting Father periods of custody every other weekend and on Wednesdays and Thursdays during the week. Father exercised these periods of custody until the end of 2011.

4. Mother moved to Lycoming County in April of 2012.

5. A custody Order was entered in Sussex County, Delaware, on January 10, 2013, wherein the parties agreed to work together to establish and build a father/daughter bond. Father was granted monthly contact with the Child for two hours on the first Saturday of the month, and further contact as they may agree. The parties were to work together and increase Father's contact.

6. In that Order, the parties stipulated that jurisdiction over any future custody proceedings would be in Pennsylvania.

7. Father exercised his periods of custody pursuant to the Court Order until September of 2013.

8. Father then filed a Petition to Modify Visitation in the State of Delaware and after a pre-trial hearing held on September 9, 2014,, Sussex County, Delaware, Judge Paula Ryan issued an Order dated October 7, 2014, finding that Mother lived in

Pennsylvania and Father lived in Massachusetts, and therefore Delaware was an inconvenient forum.

9. On October 16, 2014, Mother filed a Complaint for Custody in Lycoming County.

10. A custody conference was held on December 4, 2014, at which time Mother was present and represented by counsel and Father participated by telephone without counsel.

11. An interim Order was entered on that date granting Father partial physical custody of the Child on the first Saturday of each month and that his period of custody shall be supervised by one of his family members for the first four times the Child is in his custody. Father was to exercise his periods of partial custody in "Mother's community."

12. Because the parties did not agree on the interim Order, a pre-trial conference was scheduled for February 11, 2015.

13. Mother appeared with her counsel at the pre-trial hearing. Father did not appear.

14. The Court viewed Father's failure to appear as an agreement to the interim custody Order, and on February 17, 2015, entered a Final Order in which the Order of December 14, 2014, remained in full force and effect with the addition that Father must contact Mother by 6:00 p.m. on the Friday evening prior to his visit if he intended to exercise custody.

15. Father made no arrangements to exercise his periods of custody after the Order of February 17, 2015, was entered.

16. In April or May of 2016, Mother had contact with Father via phone call and/or text. Mother testified that Father asked what Child was doing, and then would harass her by saying she was a bad mother and withholding the Child from him.

17. Father asked for pictures of the Child, and Mother sent them. Father never asked to speak directly to the Child.

18. Mother's phone number has not changed since Father's last attempt to contact her in April or May of 2016. Mother has lived at the same address since 2012, and Father is aware of said address from previous court filings.

19. Mother filed a Motion to Stay/Motion to Suspend Custody on June 3, 2016, which was scheduled for a hearing on August 30, 2016.

20. Mother and her counsel appeared on August 30, 2016. Father, though properly served by regular mail, failed to appear. Based upon the fact that it had been almost three years since Father had seen Child, the Court granted Mother's Motion to Stay. Father's periods of custody outlined in the December 4, 2014, Order, which was made into a Final Order on February 17, 2015, were suspended pending resolution of the Petition to Involuntarily Terminate his Parental Rights.

21. Father is in arrears in child support. As of August 2012, Father was more than \$6,000 in arrears. Mother receives periodic payments, when it is convenient for Father.

22. Child calls Mother's Paramour "Dad." Child does not know Father and has no relationship with him.

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). 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. Father's last in-person contact with the Child was in September 2013. Mother testified that she had limited contact with Father through text and phone call in April or May of 2016, wherein Father would ask what the Child was doing, but never requested to speak with the Child directly. Father is in arrears on his child support obligation. Mother indicated she received a payment the week before the

hearing, but testified that Father only pays child support when it is convenient for him, or when there is a pending court matter.

A parent has an affirmative duty to be part of a child's life; Father has not met this affirmative duty. Father has shown, at best, a passive interest in the Child during the past 3 years. The Court finds that Mother placed no obstacles in Father's path which would prevent him from exercising his parental rights, privileges, and obligations with regard to Child. Father's sole contact with Mother in the six months preceding the filing of the Petition to Involuntarily Terminate his Parental Rights was to ask what the Child was doing and request pictures. Father had no contact with the Child since September of 2013. It appears to this Court that Mother and Paramour 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 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. The Child refers to Mother’s Paramour as “Dad,” and does not know her biological Father. Father has not seen Child since September 2013, when the child was less than 3 years old. 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 Mother's Paramour, who has lived with Child since she was approximately 18 months old, and who is the only father-figure the Child would know. It is evident to the Court that Mother's Paramour loves and cares for Child and treats her as his own. Mother's Paramour 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 Mother and her Paramour are not currently married, they have resided together for more than four years, and have a child together, who is the half-sibling of Child. The Court is satisfied that both Mother and her Paramour understand the potential consequences of allowing Paramour to adopt Child, and that termination of Father's parental rights and allowing the adoption by Paramour to proceed is in the best interest of the Child.

Conclusions of Law

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

2. The Court finds that BP and GS have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of BMP will best be served by termination of BJW'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. 6510**
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BMP, :
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a minor child, :

DECREE

AND NOW, this **6th** day of **January, 2017**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of BJW, held on January 4, 2017, it is hereby ORDERED and DECREED:

- (1) That the parental rights of BJW 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