

TS Adoption

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

IN RE: : **NO. 6544**
:
TS, :
:
minor child, :
:

ORDER

AND NOW, this 13th day of **November, 2017**, before the Court is a Petition for Involuntary Termination of Parental Rights filed on April 5, 2017, by MH and KH, with regard to the parental rights to the minor child, TS. Petitioners seek to terminate the parental rights of the child's biological Father, ThS, as a prerequisite to adopting the child. The child's biological mother, LS, executed a consent to adopt, voluntarily relinquishing her parental rights. Counsel for Petitioners has indicated that a Petition to Confirm Consent will be filed if the Petition for Involuntary Termination of Father's Parental Rights is granted. A hearing on the Petition was held on October 31, 2017, at which time Petitioners were present with their counsel, Melody Protasio, Esquire; Father was present via Polycom with his counsel, Dance Drier, Esquire; and the Guardian Ad Litem, Patricia Shimpan, Esquire, was present on behalf of the child. The child, TS, was not present at the hearing.

Findings of Fact

1. TS ("Child") was born on May 6, 2011, in Pennsylvania. She currently resides with MH and KH ("Petitioners"), at 2350 Kenwood Avenue, Williamsport, Pennsylvania.

2. The Child's Mother is LS ("Mother"), who is the cousin of Petitioner MH. Mother signed a Consent to Adopt.
3. The Child's father is ThS. Father is currently incarcerated in SCI-Laurel Highlands.
4. Mother and Father were never married.
5. The Child initially came into the Petitioners' care in January 2014, when both Mother and Father were incarcerated.
6. On March 24, 2014, Petitioner MH was appointed guardian of the person and the estate for the Child at Lycoming County Orphans Court Docket #14-0111.
7. On June 17, 2014, Petitioners filed a Complaint for Custody at Lycoming County Docket #14-20812. At the time of the filing, Father was incarcerated at SCI Waymart.
8. At the custody conference held on July 16, 2014, Mother, Father, and Petitioners reached an agreement and an Order was docketed on July 21, 2014.
9. The July 21, 2014, Order granted Petitioners, Mother, and Father shared legal custody. Petitioners were granted primary physical custody. Mother was granted physical custody every Wednesday and Thursday from 9:30 a.m. until 5:00 p.m. Father was granted physical custody every other weekend from Friday at 12:00 p.m. until Sunday at 7:30 p.m., and on opposite weeks on Friday from 8:15 a.m. until 7:30 p.m.
10. Father exercised his periods of custody under this Order until the Fall of 2014 when he entered rehab for approximately 49 days following a probation violation.
11. Upon his completion of rehab, Father again exercised periods of custody under the July 21, 2014, Order.

12. Father testified that he had approximately 13 months of sobriety following rehab, until he had to have surgery and relapsed on pain medication.
13. Father was re-incarcerated in January 2016.
14. Father sent Child a birthday card to Petitioners' house in 2016.
15. Petitioner MH testified that Child has received no other cards or gifts from Father for birthdays or other holidays.
16. Petitioner MH testified that she has permitted the Child to maintain contact with the paternal grandmother, Crystal Smith, after Father was re-incarcerated.
17. Petitioner MH testified that paternal grandmother did not contact her to inquire about, or make arrangements to see, the Child from approximately May 2016 to October 2016.
18. Since October 2016, the Child has visited with paternal grandmother approximately one time per month.
19. Mother filed a Petition to Modify Custody on October 12, 2016.
20. At a time set for a conference on December 6, 2016, the Court noted that, despite arrangements being made with the prison to allow Father's participation by telephone, Father chose to go to his job in the kitchen rather than make himself available for the conference.
21. The Court further noted that due to Father's incarceration, he was unable to exercise any periods of physical custody and therefore in the Order docketed on December 9, 2016, Father was not awarded any periods of physical custody. Father continued to maintain shared legal custody of the Child.

22. Petitioner MH testified that she was a party to a 3-way call with Father and paternal grandmother. Father allegedly made a threat to MH, who contacted the Williamsport Police Department. Upon the advice of the police, MH contacted the state correctional institution where Father was incarcerated at the time. There was testimony that as a result of the impermissible 3-way call and alleged threat, the prison prohibited Father from calling Petitioners; however, there were no representatives from the prison called as witnesses to confirm or deny that fact.

23. Petitioner MH testified that she was unaware that she would have to request that her number be placed on an approved list before Father could call her. Father testified that he did not inform her of the steps she would need to take to do so.

24. Father anticipates his next parole hearing will be in June 2018. The max-out date for his sentence is August 28, 2019.

25. Father testified that he is taking classes in prison regarding parenting as well as budgeting and investing. He testified that they are teaching him to be a better father and member of the community.

26. Child receives approximately \$135 per month in derivative Social Security benefits from Father. Father has never provided any other type of financial support, either voluntary or court-ordered, to Petitioners while Child has been in their care.

27. Father attended one event at Child's preschool when he was not incarcerated.

28. Father has never attended any of the Child's medical or dental appointments. Father did show up as the Child was being released from the hospital

after having her tonsils removed. Petitioners invited Father to attend a session of Child's play therapy but Father never attended.

29. Father has a daughter, M, who lives with his mother. Father also has a son, R. Father testified that his mother put money on a phone card, and he also purchased his own phone card, and that he speaks with M approximately every other day.

30. Father testified that he contacts the Child when she spends time at his mother's house. He further testified that he has sent mail for the Child to his mother's home.

31. Father has never filed anything with the Court to establish regular phone calls or visits for the Child while he is incarcerated.

32. Petitioners have a daughter, AH, age 16. Petitioner MH testified that the Child and Anika have a sibling-like relationship. Petitioner MH's father also resides in the home.

33. The Petition for Involuntary Termination of Father's Parental Rights was filed on April 5, 2017.

34. Father introduced into evidence a letter sent to the Child. The mail was postmarked on August 1, 2017 (F3).

35. Father introduced into evidence a picture he drew and sent to the Child. The mail was postmarked September 14, 2017 (F6).

36. In September 2017, without Petitioners' knowledge, paternal grandmother took the Child to the prison to see Father.

37. Father testified that it took the Child approximately 15 minutes to warm up to him, but the visit otherwise went well. Father introduced two pictures taken at the visit into evidence (F2 and F7).

38. The GAL testified that when she spoke with the Child about the visit to the prison, the Child stiffened up, indicated that she did not enjoy it, and does not want to go again.

39. The GAL testified that the Child did not seem particularly receptive to seeing Father even if he was not incarcerated.

40. The GAL testified that the Child appears happy in her current home, and that all her needs, including special needs, are being met.

Discussion

Petitioners assert that the grounds for termination of the Father's parental rights may be found in 23 Pa.C.S. §2511(a)(1) and (a)(2), which read:

§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.
 - (2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

A court may terminate parental rights under §2511(a)(1) where a parent demonstrates a settled purpose of relinquishing parental 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. 2004), appeal denied, 872 A.2d 1200 (2005) citing In Re: D.J.S., 737 A.2d 283, 286 (Pa. Super.1999).

With respect to 23 Pa.C.S. § 2511(a)(2), the relevant inquiry before the court is as follows:

In order to terminate parental rights pursuant to 23 Pa.C.S. §2511(a)(2), the following three elements must be met: (1) repeated and continued incapacity, abuse, neglect or refusal; (2) such incapacity, abuse, neglect or refusal has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being; and (3) the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.

In re Adoption of M.E.P., 825 A.2d 1266, 1272 (Pa. Super. 2003). This Court has long recognized that "[p]arents are required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities." In re: A.L.D., 797 A.2d 326, 337 (Pa. Super. 2002). "[A] parent's vow to cooperate, after a long period of uncooperativeness regarding the necessity or availability of services, may properly be rejected as untimely or disingenuous." Id. at 340 (internal citation omitted).

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 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).

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. 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. Father has spent the greater part of his daughter’s life incarcerated. The Child initially came into the Petitioners’ care in January 2014 because both Father and Mother were incarcerated. Father was not incarcerated in July

2014, when he entered into a custody agreement with Petitioners and Mother, wherein he was granted physical custody of the Child every other weekend from Friday until Sunday and, on opposite weekends, on Friday only. Petitioner MH testified that although Father did exercise these periods of custody, he never requested, either verbally or by filing a petition for modification, additional time with the Child. Father attended only one event at the Child's preschool the entire time he was not incarcerated, and he never attended any routine doctor or dentist appointments, despite Petitioner MH testimony that she kept Father informed of all matters pertaining to shared legal custody. Father never provided any financial support to the Petitioners while they had primary custody of his daughter. Simply put, when Father was not incarcerated, he performed the bare minimum parental duties. Beyond exercising his periods of custody, there was no testimony that Father fulfilled his affirmative duty to exhibit a continuing interest in the Child or put forth a genuine effort to maintain communication and association with the Child.

Following his re-incarceration, Father's efforts to fulfill his parental duties and to maintain a place of importance in the Child's life have been even less evident. Though incarceration alone is not a basis for which to terminate a parent's parental rights, the Court finds that Father's attempts to maintain any type of relationship with the Child have been minimal at best. Although Father introduced into evidence several letters and drawings he sent to the Child, all were postmarked well after the Petition for Involuntary Termination was filed. Father testified that he has been sending letters for the Child to his mother's house for the past 1 ½ years. However, there was no testimony presented from his Mother to corroborate Father's testimony, nor were any letters received prior to

the filing of the Petition entered into evidence. Petitioner MH testified that when the Child visits with paternal grandmother, she never brings anything home from the visits. Father testified that he calls to speak with the Child when she is at his mother's house. Father also testified that while he did not expect Petitioners to put money on a phone card so that he could contact the Child, he never requested them to do so nor did he inform them of the steps that would need to be taken in order to have their number placed on his approved contact list. Additionally, he testified that his mother puts money on a card, and that he has put money on his own card since June of 2016, enabling him to speak to his other daughter several times per week. Based on the testimony of Petitioner MH regarding the frequency of the Child's visits with paternal grandmother, even if Father did call every time she was there, he would have spoken to her on average one time per month prior to the filing of the Petition for Involuntary Termination.

Father testified that he is now participating in programming at the prison including Inside Out Dads and Money Smart, and these classes are teaching him to be a better father and member of the community. However, this Court finds that Father's efforts are too little, too late. When Father was not incarcerated, he did not work diligently to assume full parental responsibilities. He was content to allow Petitioners to maintain primary custody of the Child and provide her with the financial and emotional support she required. He made no efforts to attend her medical appointments or therapy sessions, despite being invited to do so by Petitioner MH. Since his last incarceration, Father cannot be said to have utilized all available resources to foster a continuing relationship with Child. Father sent only one birthday card to the Child prior to the Petition for Involuntary Termination being filed. He never sent any other gifts or letters to

the Child at the Petitioners' address. Based on the evidence introduced, all correspondence by Father to Child that were sent to his mother's home were sent well after the filing of the Petition for Involuntary Termination. This Court finds that Father has, by conduct continuing for a period of at least six months immediately preceding the filing of the petition, evidenced a settled purpose of relinquishing parental claim to the Child and has refused or failed to perform parental duties. This Court finds that Petitioners have established, by clear and convincing evidence, that Father's rights should be terminated pursuant to 23 Pa.C.S. §2511(a)(1).

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 strong bond with the Child. Prior to his mother taking the Child to visit him in prison, Father's last in-person contact with the Child was in late 2015 or early 2016. Prior to his incarceration, Father exercised only the minimal periods of custody outlined in their agreement docketed on July 21, 2014. Father never requested additional time from Petitioners, nor did he file anything with the Court to increase his periods of custody. Petitioner MH testified that the Child has indicated that she misses her Mother, but that she does not ask about Father. The Child's GAL testified that when asked about the visit to the prison, the Child seemed uncomfortable and indicated that she did not want to go back. In the two photographs that were taken during the prison visit, the Child does not appear to be smiling. The GAL further testified that the Child did not seem very receptive to spending time with Father even upon his eventual release from incarceration.

It is clear that Petitioners have a very loving and stable relationship with the Child. They have stepped up and supported the Child emotionally and financially when Mother and Father were not able to, as well as when they were able to but chose not to.

The Child is in a loving and stable home, and all her needs are currently being met. Petitioners testified that the Child has been let down a lot in her young life, and they want to provide her with the love, support, and consistency that she deserves. The Court finds that termination of Father's parental rights would not destroy an existing necessary and beneficial relationship, as there currently exists no significant relationship between Father and Child.

Conclusions of Law

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

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

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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