

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

IN RE: : **NO. 6585**
:
ARH, :
:
minor child, :
:

OPINION AND ORDER

AND NOW, this 16th day of **July, 2018**, this Court conducted a hearing on June 26, 2018, on the Petition to Terminate the Parental Rights of CD ("Father"), the biological father of ARH ("Child"), born November 19, 2013.

The Petition was filed by the Child's mother, LH ("Mother"), and MC, Mother's paramour. MC intends to adopt the Child if the Petition is granted.

Present at the hearing were Mother and her attorney, Taylor Mullholand, Esquire. Father appeared pro se, although he had previously been advised as to the availability of counsel.

Finding of Facts

1. ARH ("Child") was born on November 19, 2013, in Fort Bragg, North Carolina.
2. The Child currently resides with Mother, LH ("Mother"), and her paramour, MC, at 1179 Petersburg Road, Allenwood, Pennsylvania.
3. The Child's Father is CD ("Father"), who resides at 1219 Main Street, Northampton, Pennsylvania.

4. Mother and Father were married at the time of the Child's birth.
5. Father was unable to attend the Child's birth because he was incarcerated.
6. Mother moved to Pennsylvania with the Child in May of 2014.
7. Mother testified that Father has asked to see the Child 3 or 4 times since Mother moved to Pennsylvania but he never followed up on those requests or made specific arrangements to spend time with the Child.
8. Father last saw the Child in December of 2016. Mother, her paramour, and the Child met Father at a local restaurant for dinner and went to Starbucks afterwards. Father testified that the total visit lasted approximately 2 hours.
9. Father did not make arrangements at the end of that visit to see the Child again.
10. Father had no contact with the Child from December of 2016 until after he received notice that Mother was petitioning to involuntarily terminate his parental rights.
11. Father contacted Mother one time after the December 2016 visit, to request the Child's social security number for his taxes.
12. Father moved to Pennsylvania in March of 2016. Father worked in the field as a tower technician during the week and stayed in a hotel in Lancaster on the weekends until April of 2017.
13. Father took a new job outside of Allentown, Pennsylvania, and has resided there with his girlfriend and her two children since March of 2017.

14. Father has never filed a custody action with the Court to establish periods of physical custody with the Child, despite testifying that he was aware that he could file at any time and did not need an attorney to represent him.

15. Father does pay child support through a wage-attachment. Mother testified that his payments have not always been consistent and that he currently has arrears of approximately \$1,300.

16. Mother testified that Father knows her phone number and address. Father testified that he knows Mother's parents' address, but was not provided with Mother's address the last time he requested it.

17. Mother and her paramour have been dating for 3 ½ years. They are expecting a child together and both testified that they intend to get married.

18. The Child calls Mother's paramour "Dad." Mother's paramour testified that she did this on her own and it was not something he requested or encouraged.

19. Mother testified that the Child would not recognize Father if she were to see him.

Discussion

Mother asserts 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 stated:

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 that as of the date of the Petition for Involuntary Termination of his parental rights, Father had evidenced a settled purpose of relinquishing parental claim to the Child and had failed to perform his parental duties for a period well in excess of six (6) months.

A parent has an affirmative duty to be part of a child's life; Father clearly has not met this affirmative duty. The interest Father has shown in the Child since Mother moved to Pennsylvania can be characterized as passive at best. Mother testified that Father has asked to see the Child a mere three or four times since she moved to Pennsylvania when the Child was six months old. Father's last contact with the Child was in December of 2016, which lasted for approximately two hours. Father acknowledged that he did not attempt to make any arrangements for future visits at the time of his last visit. When questioned by the Court as to why he made no attempts to seek visitation, either by communicating directly with Mother or through court intervention, Father testified he had been busy trying to find and keep a career, and when he was laid off for three months he spent all his time looking for work. The Court finds this excuse disingenuous, as Father also testified that he had a steady job, stable housing, and a cell phone since April of 2017, almost one year prior to the filing of the Petition.

The Court finds that Mother placed no obstacles in Father's path which would prevent him from exercising his parental rights, privileges, and obligations to Child. Father has not contacted Mother to request time with Child since December of 2016, or to inquire about her health or well-being despite knowing Mother's phone number. The only contact Father had with Mother regarding the Child since the last visit was a

request for the Child's Social Security Number. Father sent no cards or gifts to the Child on her birthday or holidays. Father did not inquire about future visits at the last visit.

Father at no time used the court to establish and enforce his custodial rights.

The Court finds that Mother and her paramour have met their burden in establishing by clear and convincing evidence that Father has a settled purpose of relinquishing parental claim to the Child and has refused or failed to perform parental duties for a period in excess of six months.

As the statutory grounds for termination have been met under 23 Pa.C.S. §2511(a)(1), 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 there is no bond between the Child and Father. Father has not seen the Child since December of 2016, when the Child was approximately three 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 would not recognize Father due to the limited contact he had with her from birth until 2016 and the passage of time since his last contact with her. 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 lived with the Child for 3 ½ years, and the Child refers to him as "Dad." Mother and her paramour are expecting a child together, and intend to get married in the future. Mother's paramour put it best when he testified that "they have grown together as a family." He has stepped in and provided the love and support the Child needs and has assumed the parental responsibility that Father has evidenced a settled purpose of relinquishing.

The Court is satisfied that both Mother and her paramour understand the potential consequences of allowing Mother's paramour to adopt Child, and that

termination of Father's parental rights and allowing the adoption by Mother's paramour, the only Father figure the Child has ever known, to proceed is in the best interest of the Child.

Conclusions of Law

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

2. The Court finds that LH and MC have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of ARH will best be served by termination of CD's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Dudley N. Anderson, Senior Judge

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DECREE

AND NOW, this 16th day of **July, 2018**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of CD, held on June 26, 2018, it is hereby ORDERED and DECREED:

- (1) That the parental rights of CD 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,

Dudley N. Anderson, Senior Judge