

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

IN RE:	:	NO. 6592
	:	
A.W.,	:	
minor child	:	

OPINION AND ORDER

AND NOW, this 25th day of **July, 2018**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, JW, and her husband, LW, on March 13, 2018. Said petition is in regard to the rights of JW's child, AW, born December 13, 2005. Mother and her husband seek to terminate the parental rights of the child's biological father, BY, as a prerequisite to having the child adopted by Mother's husband. The Petition for Involuntary Termination of Parental Rights, Petition for Adoption, Act 101 Notices, and Consent to Adopt were served upon BY by personal service on April 19, 2018, as evidenced by the Affidavit of Personal Service filed on April 20, 2018. A pre-trial conference on the Petition was held on May 18, 2018. Father did not appear at the pre-trial conference. An Order was entered by this Court on May 18, 2018, advising BY 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 June 8, 2018. BY had no contact with the Court concerning his participation in the hearing or the appointment of counsel on his behalf. A hearing on the Petition to Involuntarily Terminate the Parental Rights was held on July 24, 2018. BY did not appear, despite the Court finding that he had proper notice of the hearing. JW and LW appeared with their counsel, Jason Lepley, Esquire.

Finding of Facts

1. AW ("Child") was born on December 13, 2005. The child currently resides with her mother, JW ("Mother"), and Mother's husband, LW ("Husband"), at 325 Smith Street, Jersey Shore, Lycoming County, Pennsylvania.
2. Mother and Husband have been married since September 23, 2017.
3. The Child's biological father is BY ("Father"). Father resides at 321 Mulberry Street, Montoursville, Lycoming County, Pennsylvania.
4. At the time of the Child's birth, Mother and Father were unmarried.
5. Father's last contact with Mother or the Child was approximately 10 years ago.
6. Since Father's last contact with the Child, he has not sent any cards or gifts to the Child for birthdays or holidays.
7. Mother has had the same place of employment for approximately 14 years. Father has previously contacted her at her place of employment.
8. Mother was living with her parents at the time of Father's last contact with the Child. Her parents still live in the same location.
9. Father knew how to get in touch with Mother if he wanted to inquire about the Child's health and well-being or make arrangements to see the Child.
10. Mother has not done anything in the last 10 years to prevent Father from having contact with the Child.
11. Mother's Husband has been involved with the Child since 2013, and has lived with Mother and Child since shortly thereafter.

12. Mother's Husband has a father/daughter relationship with the Child.

Husband provides financial and emotional support for the Child and considers her his daughter.

13. Child has no relationship with Father or anyone in Father's family.

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). 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 Involuntarily 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. Mother testified that Father's last contact with the Child was approximately 10 years ago.

A parent has an affirmative duty to be part of a child's life; Father has clearly not met this affirmative duty. Father has not even shown a passive interest in the Child. Father has never reached out to Mother to inquire about the Child despite knowing how to contact her, as Mother testified that she believes she has the same phone number she did when she last had contact from Father. Mother further testified Father was

aware of where she works and where her parents live. As he has had no contact with the Child for 10 years, Father has failed to play any role in the medical and educational decisions regarding the Child. Father did not send any birthday or Christmas gifts to the Child in the last 10 years, nor did he make any attempts to contact Mother to see the Child. The Court finds Mother placed no obstacles in Father's path which would prevent him from exercising his parental rights, privileges, and obligations with regard to Child. Simply put, Father has shown no interest in being a parent to the Child.

This Court further finds that Mother and her Husband have clearly established that Father has evidenced a settled purpose of relinquishing parental claim to the Child and has refused or failed to perform parental duties for the last 10 years. 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)).

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 the Child has no bond with Father. Termination of Father’s rights would not destroy an existing necessary and beneficial relationship as 10 years have passed since Father and the Child have had any contact with each other. Child is bonded to Mother’s Husband, who has been a prominent figure in her life for the past 5 years. It is evident to the Court that Mother’s Husband loves and cares for Child and treats her as his own. Mother’s Husband provides food, clothing, and shelter for the Child, as well as emotional support. Mother’s Husband has stepped in and provided the love and security the Child needs and has assumed the parental responsibilities that Father has utterly failed to perform and has evidenced a settled purpose of relinquishing.

The Court is satisfied that both Mother and her Husband understand the potential consequences of allowing Husband to adopt Child, and that termination Father’s

parental rights and allowing the adoption by Mother's Husband to proceed is in the best interest of the Child.

Conclusions of Law

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

2. The Court finds that JW and LW have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of AW will best be served by termination of BY'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 25th day of **July, 2018**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of BY, held on July 24, 2018, it is hereby ORDERED and DECREED:

- (1) That the parental rights of BY 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