

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

IN THE INTEREST OF:	:	NO. 6594
	:	
KCG,	:	
minor child	:	

OPINION AND ORDER

AND NOW, this 2nd day of **August, 2018**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, SKG, and her husband, LRG, on March 20, 2018. Said petition is in regard to the rights of SKG's child, KCG, born December 17, 2013. Mother and her husband seek to terminate the parental rights of the child's biological father, WRG, as a prerequisite to having the child adopted by Mother's husband. The Petition for Involuntary Termination of Parental Rights, with notice of a pre-trial conference, was served upon WRG by publication in the Cleburne Times-Review on June 29, 2018, and June 30, 2018, as evidenced by the Publisher's Affidavit filed at the time of the hearing. A pre-trial conference on the Petition was held on July 6, 2018. Father did not appear at the pre-trial conference. Following said conference, a second notice was published in the Cleburne Times-Review on July 10, 2018, advising WRG of the time, date, and location of the termination hearing. A hearing on the Petition to Involuntarily Terminate the Parental Rights was held on July 25, 2018. WRG did not appear. Both SKG and LRG appeared with their counsel, Patricia Shipman, Esquire.

Finding of Facts

1. KCG ("Child") was born on December 17, 2013. The child currently resides with her mother, SKG ("Mother"), and Mother's husband, LRG ("Husband"), at 726 Washington Blvd., #307, Williamsport, Lycoming County, Pennsylvania.
2. Mother and Husband have been married since March 4, 2016.
3. The Child's biological father is WRG ("Father"). Father's last known address is in Cleburn, Texas.
4. At the time of the Child's birth, Mother and Father were unmarried but were in a relationship and living together in Cleburn, Texas.
5. Mother and Father ended their relationship in July of 2015.
6. Pursuant to a custody order entered in Johnson County, Texas, in June of 2016, Father was granted physical custody every 1st, 3rd, and 5th weekend of the month and every Thursday for 2 hours.
7. The custody order contained a provision wherein Mother could request that Father submit to a random drug test, and if the result was positive, Father agreed that his periods of custody would only occur under state supervision.
8. In October of 2016, Mother requested Father submit to a drug test, which produced a positive result.
9. Father never followed through with making arrangements for supervised visits with the Child, and therefore his last contact with the Child was in October 2016.
10. At the time of Father's last contact with the Child, Mother and the Child were living in North Richland Hills, Texas.
11. Father was incarcerated for approximately one month in November/December 2016.

12. Mother notified Father by email and/or text every time she and the Child moved. Mother has the same phone number and email address she had when she and Father were in a relationship.

13. Mother's parents live in Joshua, Texas. Father is aware of their address and phone number, but has not contacted them since the last time he saw the Child.

14. Mother maintains a relationship with Father's family. Mother testified that Father's mother does not know where he is but that she sent a copy of the published hearing notice to him at his last known address.

15. Since Father's last contact with the Child, he has not sent any cards or gifts to the Child for birthdays or holidays.

16. Mother has not received child support since February 2017.

17. Father had multiple ways 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.

18. Mother has not put up any obstacles designed to prevent Father from having contact with the Child.

19. Mother and her Husband have been married for approximately 2 ½ years. They have a daughter together, who is the Child's half-sister.

20. Mother's Husband has a father/daughter relationship with the Child. Husband has taken on all parental responsibilities and provides financial and emotional support for the Child.

21. Child has no relationship with Father. Other than through pictures shown to her by Mother, Child would not recognize Father.

Discussion

Mother and Husband aver that the basis for termination in this case may be found in 23 Pa.C.S. §§2511(a)(1) and (a)(2), which provide 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.
- (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 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 in October of 2016.

A parent has an affirmative duty to be part of a child's life. Mother testified that at the time their custody order was initially entered, Father did exercise his periods of custody. However, since failing a drug test in October of 2016, which required him to arrange for all periods of his custody to be supervised, Father has not had any contact with Mother or the Child, and has clearly not met this affirmative duty. Since his last contact with the Child, Father has not even exhibited a passive interest in her health, education, or well-being.

Mother testified that she informed Father via email and/or text each time she and the Child moved, including when she and her Husband moved to Pennsylvania, and that she received no response from him. Mother has the same phone number and email address that she had when she and Father were in a relationship. Mother further testified that Father is aware of her parents' address and phone number but has not contacted them to inquire about the Child or make arrangements for visitation. Father has not sent any birthday or Christmas gifts to the Child since his last visit in October 2016, nor did he make any attempts to arrange for the supervised visits that were required under their custody order following his failed drug test. 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 showed no interest in being a parent to the Child for approximately 18 months prior to the filing of the petition.

Mother and her Husband have clearly established that Father evidenced a settled purpose of relinquishing parental claim to the Child and refused or failed to perform parental duties for approximately 18 months prior to the filing of the petition to involuntarily terminate his parental rights. This settled purpose of relinquishment is especially apparent given the fact that Father failed to appear for the hearing on the Petition for Involuntary Termination, and therefore offered no explanation for his 18 month absence from the Child's life. Mother and her Husband have, by clear and convincing evidence, met their burden under 23 Pa.C.S. §2511(a)(1). As only one subsection of 23 Pa.C.S. §2511(a) must be established by clear and convincing

evidence in order to proceed to an analysis under 23 Pa.C.S. §2511(b), and the Court has found that the statutory grounds for termination have been met pursuant to 23 Pa.C.S. §2511(a)(1), the Court will not address Mother's averments that termination is also warranted under 23 Pa.C.S. §2511(a)(2). The Court must now 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. The Child was less than 2 years old at the time she last had contact with Father and has no independent recollection of him. Mother testified that Child believed that Mother's Husband was her father, and only recently did she explain to the Child that he was not. If not for Mother showing the Child pictures of Father, she would not recognize him due to her young age at the time of the last contact and the amount of time that has passed since their last contact. Child is bonded with Mother's Husband, who has been a prominent figure in her life for several 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. They are a bonded and established family unit. 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 SKG and LRG have established by clear and convincing evidence that WRG's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that SKG and LRG have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of KCG will best be served by termination of WRG'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 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