

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

IN RE:	:	NO. 6600
	:	
ONW and	:	
AMW,	:	
minor children	:	

OPINION AND ORDER

AND NOW, this 20th day of **December, 2018**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, AK, on May 3, 2018, with regard to the rights of her children, ONW and AMW, both born November 8, 2013. Mother seeks to terminate the parental rights of the children's biological Father, LWG, II, as a prerequisite to having the children adopted by her Husband, TK. A hearing on the Petition was held on October 30, 2018, and December 7, 2018, at which time AK was present with her counsel, Patricia Shipman, Esquire; Father was present with his counsel, Dance Drier, Esquire; and legal counsel for the children, Tiffani Kase, Esquire, was present.

Findings of Fact

1. ONW and AMW were born on November 8, 2013, in Lock Haven, Pennsylvania. They currently resides with their mother, AK ("Mother"), and step-father, TK ("Stepfather") (collectively, "Petitioners"), in Lycoming County, Pennsylvania.
2. Petitioners have requested that their address be kept confidential due to a prior history of violence by LW against Mother.

3. Mother was born July 20, 1984. Mother married Stepfather on April 5, 2018.
4. The child's father is LW, II, whose last known address is 1983 State Route 287, Jersey Shore, Pennsylvania.
5. Mother and Father were married at the time of the Children's birth.
6. Mother filed a custody complaint on June 13, 2014, in Lycoming County at Docket #14-20,802, even though the parties were still living together.
7. A custody conference was held on July 15, 2014, wherein Mother and Father agreed that Mother shall have legal custody and primary physical custody of the Children. Under the agreement, Father was to have visitation, to be supervised by his Mother, in a location agreed upon by the parties, every other weekend, for six hours on Saturday and six hours on Sunday.
8. Mother and Father separated in approximately August, 2014, when the Children were 8 months old.
9. Mother filed a Petition for Protection from Abuse in March, 2015, in Clinton County, Pennsylvania. Mother testified that she was in a new relationship at that time and Father was not happy about it and constantly called/texted her and showed up at her job.
10. A Final Protection from Abuse Order listing Mother and Children as the protected parties was entered against Father on March 17, 2015, with an expiration date of March 17, 2018. The Protection from Abuse Order gave Mother temporary exclusive custody of the Children, but provided that either party may initiate custody proceedings pursuant to the custody statute.

11. Father filed a Petition for Modification of Custody on February 24, 2015. A custody conference was held on March 20, 2015. Father was represented by Jennifer Heverly, Esquire, and Mother was unrepresented. The parties agreed to share legal custody of the Children. The parties further agreed that Mother shall have primary custody and Father have periods of visitation, supervised by his mother, each Saturday and each Sunday from noon until 6:00 p.m. Due to the Protection from Abuse Order in effect, Father's mother agreed to meet Mother at the Jersey Shore Minit Mart to exchange the Children. Neither Father nor Mother's boyfriend at the time was permitted to be present at the exchanges.

12. Mother filed an action for child support on April 6, 2015, to Lycoming County Docket #15-20,405.

13. A follow-up custody conference was held on May 27, 2015, at which time Father's periods of custody were expanded to every other weekend from 4:00 p.m. on Friday until 4:00 p.m. on Sunday, and on the Thursdays following his weekend, from 4:00 p.m. on Thursday until 4:00 p.m. on Friday. Effective July 1, 2015, Father's weekends were to begin at 4:00 p.m. on Thursday.

14. The Final Protection from Abuse Order was amended on July 17, 2015, to permit limited contact between Father and Mother for the purposes of making arrangements for Father to exercise his periods of custody and during custody exchanges.

15. A hearing on Mother's request for child support was held on July 23, 2015, at which time Mother agreed that Father was disabled from all work and child support was set at \$0.00.

16. Mother filed to reopen her domestic relations case on October 30, 2015.

17. Mother communicated with Father's mother via Facebook regarding AMW's medical appointments and attempted to arrange a time for Father's mother and aunt to visit with the girls. These communications took place from December 15, 2015, through January 15, 2016.

18. A hearing on Mother's petition to reopen her domestic relations case was held on January 4, 2016, at which time Mother was assessed an earning capacity of \$0.00 due to her need to stay at home with AMW. Father was assessed a minimum wage earning capacity of \$1,096 net monthly income, and ordered to pay \$159.00 per month for the support of the Children.

19. Father last saw the Children together in February, 2016. He had a visit with just AMW in March, 2016.

20. Father was found in contempt of court on March 29, 2016, for failure to pay his child support. Father was sentenced to a period of 45 days incarceration. The sanction of the court could be purged by a payment of \$300.

21. Father has been under the supervision of the Lycoming County Adult Probation Office since August, 2016.

22. Father was again found in contempt of court on November 1, 2016, for failure to pay his child support. Father was sentenced to a period of 2 months incarceration. Father's sentence was to be suspended upon making 3 separate purge payments of \$300.

23. Father failed to make his required purge payments and failed to report to the Lycoming County Prison and a bench warrant was issued on November 30, 2016.

24. After he was detained on the bench warrant, Father was sentenced to 2 months of incarceration on December 13, 2016.

25. Mother and Father's mother again communicated via Facebook in January of 2017. Mother updated Father's mother about the girls and they made arrangements for Father's mother and aunt to visit with the girls.

26. A support hearing was held on August 14, 2017, with regard to Father's ability to work. At that time, his physician testified that Father had serious issues with the thoracic and lumbar regions of his spine, and was therefore unable to sit or stand for long periods of time and was very limited in his ability to lift, pull, and bend. The hearing officer found Father's physician's testimony to be credible.

27. By Order dated August 14, 2017, Father's child support obligation was suspended, effective April 4, 2017.

28. Mother filed a Petition for Modification of Custody on August 22, 2017. Father filed both a Petition for Modification and a Petition for Contempt on August 29, 2017. Father's petitions were not scheduled as he failed to provide sufficient information on his accompanying Petitions to Proceed without Payment of Fees and Costs for the Court to determine whether he was financially eligible to do so.

29. On September 15, 2017, Mother sent Father an email indicating that she had tried several times to get ahold of him, and requested that he provide her with his address and cell phone number. Mother followed up on September 18, 2017, and September 19, 2017, and indicated that she just wanted Father to be active in the Children's lives. (Ex. P2).

30. A custody conference was held on September 22, 2017. Mother attended but Father did not and it appeared to the hearing officer that Father was not properly served. At the time of the conference, Mother stated that Father had no contact with the Children for two years. The hearing officer indicated that Father confirmed this in a telephone conversation.

31. At the time of the conference, an order was entered giving Mother primary custody and Father periods of contact with the Children as agreed to by Mother. This order dated September 22, 2017, was to put in place the status quo, and another custody conference was scheduled for October 26, 2017, to review the matter.

32. Mother attended the follow-up custody conference on October 26, 2017. Father, despite being personally served by his probation officer, failed to appear. At this time, Mother reiterated that Father had no contact with the Children for two years, and that she had no contact information for Father, which made it difficult to get treatment for AMW, who has serious medical issues.

33. By Order dated October 26, 2017, Mother was granted legal custody of the Children. Mother continued to have primary physical custody of the Children, with Father having contact with the Children as agreed to by Mother.

34. Father explained his extended absence from the Children's lives by stating that he was afraid that Mother would have him arrested for violation of the Protection from Abuse Order.

35. Father testified that he was advised by Jersey Shore police officers to wait until after the Protection from Abuse Order expired to try to have contact with Mother regarding the Children or to exercise his custody rights with the Children.

36. Father's aunt, NB, testified that she also advised Father to wait until the Protection from Abuse Order expired to attempt to exercise custody because she and Father's mother were responsible for transportation and "it was just a headache every time they had visits."

37. Father's probation officer testified that he has never been detained for violating the Protection from Abuse Order. He further testified that his advice to Father would have been to follow whatever the Order says regarding contact between the parties and that he would not have made it a condition of Father's probation to have no contact with Mother if the Protection from Abuse Order permitted contact for specific purposes.

38. The Protection from Abuse Order expired on March 17, 2018.

39. Mother received a text from Father in April, 2018, the day after she got married. Father asked how the Children were doing/feeling, but did not ask to see them.

40. Father produced text messages he sent to Mother's cell phone number between May 9, 2018, and August 17, 2018, wherein he would inquire about the Children. It appears as though Mother did not respond to the messages; however, Mother testified that her phone and that number last worked sometime in April, 2018.

41. The parties' daughter, ONW, is 5 years old and is described as spunky, loving, and always on the move.

42. The parties' daughter, AMW, is also 5 years old and has a neurological disorder called Rett Syndrome. She was diagnosed at age 3, but Mother testified that she and Father were aware of her developmental delays prior to their separation. Her condition has progressed to Stage 3 out of 4 and she requires constant care.

43. AMW is unable to walk or talk and suffers from seizures. She has nurses to help feed, change, and carry her. She attends a special Head Start program and is transported by the school.

44. Father has done nothing to education himself about Rett Syndrome, but testified that he previously took care of his sick nephew and would therefore be able to manage all of AMW's medical needs.

45. While the parties had shared legal custody, Father never contacted AMW's doctors to discuss her condition.

46. Father attended one appointment with AMW's neurosurgeon approximately three years ago.

47. AMW was hospitalized in August, 2018, for almost two weeks.

48. Since the parties' separation, Father has not provided any gifts for the Children. Father testified that he spent what little money he made paying fines, not child support.

49. Mother and Stepfather have known each other since they were teenagers; they were in a relationship for about a year prior to their marriage.

50. Stepfather and ONW go walking, swimming, fishing, and camping together. Stepfather also helps Mother take care of AMW. Mother testified that Stepfather is an amazing parent to both Children.

51. Stepfather testified that he has had no contact with or from Father in the entire time he has been in a romantic relationship with Mother.

52. Stepfather is ready, willing, and able to continue parenting the Children and desires to adopt them.

53. The Children have not seen Father since they were approximately 2.5 years old.

54. Father is engaged to AA. She has 3 children. Father helps care for her children while she works.

55. Father goes to his fiancé's children's doctor's appointments and buys them presents. Father bought Christmas gifts for the Children this year.

56. It is doubtful that the Children would recognize Father.

57. There currently exists no bond between Father and the Children.

Discussion

Mother avers 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). 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 for Involuntary Termination of Parental Rights, Father has 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 testified that he was a stay-at-home parent when the Children were first born and provided everything they needed, including changing their diapers and feeding them. However, Mother testified that Father's last contact with both Children was in February,

2016. Father had a visit with AMW in March, 2016. The Children were approximately 2½ years old when they last saw Father. From March, 2016, until May 3, 2018, when the Petition for Involuntary Termination of Parental Rights was filed, Father did not even see the Children, and therefore performed no parental duties for more than two years.

Father attempted to convince the Court that the reason that he removed himself from his Children's lives for several years was due to his fear that Mother would file a contempt of the Protection from Abuse Order against Father. Father testified that he was advised by a Jersey Shore police officer to wait until the Protection from Abuse Order expired in March, 2018, to attempt to exercise his custodial rights. Father's aunt testified that she, regrettably, also told Father to wait until the Protection from Abuse Order expired. The Court does not find this reasoning to be legitimate. The Court finds it disingenuous that Father would attempt to argue that Father, who was present at the hearing to modify the Protection from Abuse Order to permit him to contact Mother the day before, the day of, and the day after he exercised any custody rights, feared Mother's accusations more than he valued his relationship with his Children. Mother testified that she never had Father charged with violating the Protection from Abuse Order and Father's probation officer confirmed that he had no probation violations related to the Protection of Abuse Order. Furthermore, Father had periods of custody established by a Court Order - punishable by contempt if Mother refused to comply - and chose not to exercise both before and after the entry of the Final Protection from Abuse Order.

Unfortunately, while Father was in and out of jail for failure to pay child support, and while relying on what he indicated was advice from a Jersey Shore police officer,

ONW was developing into an active little girl and AMW was diagnosed with Rett Syndrome. Each child needed love, support, and attention from both her parents during this time, albeit in different forms. However, Father failed to perform any parental duties whatsoever on behalf of the Children. Father attended one doctor's visit for AMW. He did nothing for ONW. When he was ordered to pay child support, he failed to hold a job and was incarcerated twice. When his child support obligation was suspended, Father failed to fulfill any parental obligation, financial or otherwise. He sent no cards or gifts on their birthday or holidays. He provided none of the day-to-day essentials. He did not attend any doctor appointments or Head Start meetings. Between March, 2016, and May, 2018, Father has not even exhibited a passive interest in his Children's health, education or well-being.

The Court finds that Mother placed no obstacles in Father's path which would have prevented him from exercising his parental rights, privileges and obligations with regard to the Children. Mother requested that the final PFA Order be modified to permit Father to contact her by text before, during, and after exercising custodial rights with the Children, and to have contact with mother when picking and dropping off the Children. Father was present at the hearing on Mother's petition to modify the PFA and was aware of the provision allowing contact, as well as the fact that the PFA Order stated that the custody provisions of the Lycoming County custody order in effect at the time controlled the situation. Shortly after the Amended Final PFA Order was entered, the parties reached an agreement at a follow-up custody conference wherein Father was entitled to exercise custody of the Children every other weekend from Thursday until Sunday, and from Wednesday until Friday following his weekend. Still, Father failed to

exercise these rights or perform any parental duties on behalf of the Children. Furthermore, Mother communicated with Father's mother via Facebook messages. Father himself provided evidence that Mother kept his mother informed about AMW's medical condition and appointments, as well as made arrangements for Father's mother to spend time with the Children. (Ex. DB, DC, DD, DE, DI, DJ, DK). The interaction between Mother and Father's mother appeared to be cordial and positive.

Father's contact with the Children was sporadic at best from the time he and Mother separated until March of 2016, after which Father's contact with the Children was nonexistent. Father introduced into evidence his multiple attempts to contact Mother by text message, beginning on May 8, 2018, nearly two months after the expiration of the PFA. (Ex. DA). Father testified that Mother never responded and Mother testified that her phone was shut off at this time so she did not receive the messages. However, the law is clear with respect to the filing of a petition under 23 Pa.C.S. §2511(a)(1), that the Court shall not consider any efforts by the parent to remedy the conditions therein which are first initiated subsequent to the giving of notice of the filing of the petition. **23 Pa.C.S. § 2511(b)**. Unfortunately for Father, his efforts were too little, too late, as Mother's petition was filed on May 3, 2018.

Finally, the Court notes that Father's fiancé testified that she has three children and Father is a wonderful father figure to them. She testified that for the year they have been in a relationship he reads to her children, cooks for them, plays with them, and picks out gifts for them. Essentially, Father is performing parental duties and providing love and support for his fiancé's children but has utterly failed to perform them for his own children since at least March of 2016.

Mother has, by clear and convincing evidence, met her burden under 23 Pa.C.S. §2511(a)(1). 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 Children have no bond with Father. The Children were approximately 2½ years old at the time they last had contact with Father. Though there was no testimony about whether the Children are aware that Stepfather is not their biological father, it is doubtful they would independently recognize Father due to their young age at the time they last had contact with him and the passage of time since that contact. The Children clearly have no bond with Father at this time. The Children are bonded with Stepfather, who has become a prominent figure in their lives. It is evident to the Court that Stepfather loves and cares for Children and treats them as his own. Stepfather helps provide food, clothing, and shelter for the Children, as well as emotional support to both them and Mother. They are a bonded and established family unit. Stepfather has stepped in and provided the love and security the Children need and has assumed the parental responsibilities that Father has utterly failed to perform and has evidenced a settled purpose of relinquishing.

Legal counsel for the Children opined that Father may love the Children, but that they need more. Father failed to take an interest in their day-to-day needs and failed to regularly exercise his custodial rights, or to use the court system to enforce those rights. Consequently, any bond there may have been between the Children and Father no longer exists, and it is in the best interest that Father's parental rights be terminated so that Stepfather may adopt the Children.

The Court is satisfied that both Mother and Stepfather understand the potential consequences of allowing Stepfather to adopt the Children, and that termination of Father's parental rights and allowing the adoption by Stepfather to proceed is in the best interest of the Children.

Conclusions of Law

1. The Court finds that AK has established by clear and convincing evidence that LWG, II's parental rights to ONW and AMW should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that AK has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of ONW and AMW will best be served by termination of LWG, II'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. 6600**
:
ONW and :
AMW, :
:
minor children :

DECREE

AND NOW, this 20th day of **December, 2018**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of LWG, II, held on December 20, 2018, it is hereby ORDERED and DECREED:

- (1) That the parental rights of LWG, II be, and hereby are, terminated as to the children above-named;
- (2) That the welfare of the children will be promoted by adoption; that all requirements of the Adoption Act have been met; that the children 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 AMWilable. 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 AMWilable 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