

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

IN RE: : **NO. 6581**
:
SEJ, :
:
minor child, :
:

OPINION AND ORDER

AND NOW, this 6th day of **December, 2018**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by LW, ACSW, ("Petitioner") of the Eckels Adoption Agency, on August 22, 2018, with regard to SEJ, a minor child ("Child"). Petitioner was instrumental in placing the Child with the proposed adopting parents. Petitioner seeks to terminate the parental rights of the child's biological father, THH ("Father"), as a prerequisite to having the child adopted by her clients. A hearing on the Petition was held on December 3, 2018, at which time Petitioner present with her counsel, Michael Collins, Esquire. Legal counsel for the child, Patricia Shipman, Esquire, was present. Dance Drier, Esquire, counsel appointed for Father, was also present. Father, though properly served, failed to appear.

At the time of the hearing, Father's counsel noted for the record that he sent Father a letter requesting that he call the Public Defender's office. Additionally, he reached out to two men with Father's name on Facebook. Father's counsel indicated that he did not receive a response to his letter or to his Facebook messages. Father's counsel requested a continuance to further attempt to contact Father. In light of the efforts made by Father's appointed counsel, as well as this Court's Order dated October 5, 2018, directing Father to contact his appointed counsel, Father's counsel's request was denied on the basis that it was Father's responsibility to contact his

counsel. Attorney Drier was released from the proceeding, and the hearing on the Petition for Involuntary Termination of Parental Rights was held in Father's absence.

Findings of Fact

1. SEJ was born on December 28, 2017, in Williamsport, Pennsylvania.
2. The Child's biological mother is SLJ ("Mother").
3. The Child's biological father is THH, whose last known address is c/o MJ, 720 Seventh Avenue, Williamsport, Pennsylvania.
4. Mother and Father were not married at the time of the Child's birth.
5. Mother was referred to the Petitioner by the hospital in October of 2017 to develop an adoption plan.
6. The Child was placed with the Eckels Adoption Agency at birth and has been in the care of proposed adoptive parents since her discharge from the hospital.
7. Mother signed a Consent to Adoption on January 4, 2018.
8. Petitioner went to see Father at the Lycoming County Pre-Release Center on December 6, 2017, accompanied by her attorney. The purpose of the visit was to explain Father's options to him and inform him of her role in the process. Petitioner provided Father her personal cell phone number as well as her office number. Attorney Collins provided Father with his business card.
9. Petitioner testified that Father discussed possibly consenting to the adoption but wanted pictures of the Child.
10. Petitioner met with Father at the Lycoming County Prison on January 9, 2018, at which time she made Father aware of the Child's birth. Petitioner took a Consent to Adopt with her to the prison. Father was not willing to sign it at that time and requested pictures of the Child.

11. Petitioner returned to the Lycoming County Prison to meet with Father on January 12, 2018. Petitioner provided pictures of the Child as requested by Father. Father wanted to speak with his foster mother, MJ, prior to signing the Consent to Adopt.

12. Petitioner returned to the Lycoming County Prison to meet with Father on February 2, 2018. Father requested that he receive pictures one time per year and one visit with the Child per year. Father did not sign the Consent to Adopt at this visit.

13. Father was released from Lycoming County Prison on or about March 2, 2018. Petitioner testified that shortly after his release, Father posted the pictures he was given of the Child on Facebook, despite explicit instructions from Petitioner not to do so.

14. Petitioner had no contact with Father after his release from Lycoming County Prison despite multiple attempts to contact him through MJ.

15. From the time of the Child's birth until the time the Petition for Involuntary Termination of Parental Rights was filed, Father provided no financial support for the Child.

16. Father has never provided a card or a gift for the Child.

17. Father appeared in person at the pre-trial conference on October 5, 2018, accompanied by MJ. Father indicated that he wished for counsel to be appointed to represent him at the time of the termination hearing.

18. Father requested to meet the Child. Petitioner contacted MJ and set up a meeting for October 14, 2018, at 8:00 a.m.

19. Petitioner arrived with the Child at the designated meeting place on October 14, 2018, but Father did not attend. Petitioner waited until 8:40 a.m. before leaving with the Child.

20. Petitioner testified that MJ had contact with Father on October 15, 2018, who indicated that he overslept on the date of the meeting. At the time of the hearing on December 3, 2018, Petitioner testified that MJ had no contact with Father after October 15, 2018.

21. Father has never met the Child, and has only seen pictures of her.

22. The Child is doing well in placement and her development is on track.

23. The Child is bonded with her adoptive parents, who are ready, willing, and able to adopt her.

24. There currently exists no bond between Father and the Child.

25. The Guardian Ad Litem supports the adoption.

Discussion

The Petition for Involuntary Termination of Parental Rights does not specify the basis for termination of Father's rights; however, after hearing held the Court finds a basis in 23 Pa.C.S. §2511(a)(1) which provides:

§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 evidenced both a settled purpose of relinquishing parental claim to the child and has failed to perform his parental duties since the Child's birth.

The Child was born on December 28, 2017. She was placed with the proposed adoptive parents upon discharge from the hospital. Father knew of the pregnancy and was made aware of the Child's birth by the Petitioner on January 9, 2018, when she met with him at the Lycoming County Prison.

Petitioner met with Father at the Lycoming County Prison on two additional occasions. Petitioner testified that Father indicated he would sign a consent to adopt if he was granted his request of pictures and a visit annually. However, while he was incarcerated, Father made no efforts to establish or maintain a relationship with the Child. He did not send any cards or letters to the Child.

Upon his release from prison on or about March 2, 2018, Father failed to use the court system to establish and exercise custodial rights over the Child. He made no attempt to contact the Petitioner to inquire about the Child's health and welfare. He did not purchase any supplies necessary for the day-to-day care of an infant or provide financial support for the Child in any way. Petitioner's conduct evidences his settled purpose of relinquishing parental claim to the Child. Furthermore, as Father did not make even a minimal effort to establish a relationship with, or provide support for, the Child, he has failed to perform his parental duties.

Petitioner has, by clear and convincing evidence, met her burden under 23 Pa.C.S. §2511(a)(1). This Court also believes that there is a basis for termination of Father's parental rights under 23 Pa.C.S. §§2511(a)(2) and (6). However, 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 these additional subsections. Having

found that termination of Father's parental rights is warranted, 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 has never even met Father, and when Father had the opportunity to meet the Child, he failed to attend the meeting. The Child is clearly bonded to the proposed adoptive parents, who are the only parents she has ever known. The proposed adoptive parents have provided food, clothing, and shelter for the Child, while Father has provided nothing in terms of financial or emotional support. They are a bonded and established family unit. The proposed adoptive parents have provided the love and security the child needs and have assumed the parental responsibilities that Father has utterly failed to perform and has evidenced a settled purpose of relinquishing. Termination of Father's parental rights and adoption by the family with which she is currently placed is in the Child's best interest.

Conclusions of Law

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

2. The Court finds that LW, ACSW, has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of SEJ will best be served by termination of THH'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
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IN RE: : NO. 6581
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DECREE

AND NOW, this 6th day of **December, 2018**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of THH, held on December 3, 2018, it is hereby ORDERED and DECREED:

- (1) That the parental rights of THH 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 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