

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

IN RE: : **NO. 6606**
:
ZWB, :
:
minor child, :
:

OPINION AND ORDER

AND NOW, this 31st day of **October, 2018**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, SL, on January 6, 2018, in regard to the rights of her child, ZWB, born September 1, 2012. Mother seeks to terminate the parental rights of the child's biological Father, VB, as a prerequisite to having the child adopted by her Husband, DT. A hearing on the Petition was held on October 26, 2018, at which time Mother and her Husband were present with their counsel, Mary Kilgus, Esquire; Father was present with his counsel, Dance Drier, Esquire; and legal counsel for the child, Trisha Hoover Jasper, Esquire, was present.

Findings of Fact

1. ZWB was born on September 1, 2012, in Montour County, Pennsylvania. He currently resides with his mother, SL, and step-father, DT, at 382 South Main Street, Hughesville, Lycoming County, Pennsylvania.
2. SL was born June 6, 1971, and is currently 47 years of age. Mother married DT on October 4, 2018.
3. The child's father is VB, who resides at 2362 Route 405 Highway, Muncy, Pennsylvania.
4. Mother and Father were married on September 10, 2011.¹

¹ During the hearing on the Petition to Involuntarily Terminate Parental Rights, the Court took judicial notice of several other dockets contained in Lycoming County regarding both parties, including the divorce docket,

5. The child, ZWB, was born on September 1, 2012.
6. Mother and Father separated in approximately October, 2014.
7. On October 29, 2014, Mother filed a Petition for Protection from Abuse against Father.
8. A Final Protection from Abuse Order listing Mother as the protected party was entered against Father on November 26, 2014, with an expiration date of November 26, 2017. Also on November 26, 2014, an Order was entered finding Father in contempt of the Temporary Protection from Abuse Order. Father was placed on six months' probation under the supervision of the Adult Probation Office of Lycoming County.
9. Father filed a Complaint for Custody on December 2, 2014, pro se. He asked that the matter be given expedited consideration as he had not seen his son for over four weeks.
10. On January 7, 2015, a custody conference was held in regard to the Complaint for Custody that was filed by Father. A temporary agreement was entered between the parties granting Father periods of physical custody that did not include overnights and the parties agreed to return for a follow-up custody conference.
11. An Order was entered on March 9, 2015, after a follow-up custody conference where the parties reached an agreement in regard to custody. Father was granted shared legal custody and partial physical custody every other weekend for one overnight and two days per week.

14-21,660; PFA docket 14-21,479; and a custody docket filed to 14-21,606. Portions of the Findings of Fact come from the dockets.

12. On August 26, 2015, Father filed a pro se Petition for Modification of Custody seeking additional periods of physical custody with his son.

13. On September 18, 2015, an Order was entered which expanded Father's period of partial custody and scheduled a follow-up custody conference for December 22, 2015. Pursuant to the Order, the parties were to meet at the Sheetz in Muncy, Pennsylvania, to exchange custody.

14. On January 19, 2016, an Order was entered which continued to provide for Father to have shared legal custody and periods of partial physical custody. The parties were directed to return to Family Court for a follow-up conference on May 27, 2016. The purpose of the follow-up conference was to explore whether it was appropriate to expand Father's periods of physical custody as he was seeking to eventually expand his periods of physical custody to 50/50.

15. On May 31, 2016, an Order was entered after a follow-up custody conference. The Order provided for Father to have shared legal custody and periods of physical custody. The Order also indicated that Father may be relocating to North Carolina at the end of June, 2016, and provided for a custody schedule if he did move out of state.

16. Father never relocated to North Carolina.

17. On May 25, 2016, Mother's counsel sent a letter to Father. Among other things, the letter indicated that Mother has had to repeatedly sit at Sheetz waiting for Father and he has failed to show for approximately a month. It was requested that if Father was unable to exercise his periods of custody, that he inform Mother as soon as possible.

18. At some point in July of 2016, Mother sent Father a text indicating that Father had not seen the child in approximately five weeks and that the child missed Father. Mother offered visitation to make up for some of Father's lost time. Father never responded to Mother's text.

19. On July 13, 2016, Mother's counsel again sent correspondence to Father again indicating that Father has failed to exercise any periods of physical custody since the prior Court hearing. The letter proposes that rather than Mother coming to Sheetz and Father not appearing, that Father's mother (paternal grandmother) contact Mother and advise as to whether or not he would be exercising his periods of custody so that Mother and child do not sit at Sheetz waiting. The letter further requested that Father advise as to his new address once he relocates to North Carolina.

20. Father never responded to Mother's counsel's correspondence.

21. On August 26, 2016, Mother filed a Motion for Special Relief with the Court indicating that since the entry of the Custody Order on May 31, 2016, Mother has been present at Sheetz for custody exchanges on at least nine occasions and Father has failed to appear.

22. An Order was entered on December 1, 2016, after a hearing was held in regard to Mother's Motion for Special Relief. It is noted that Father did not appear at this hearing. Pursuant to the Court Order that was entered, Father's custody rights were temporarily suspended due to the fact that he has failed to appear for any visits since June of 2016, and that it causes stress for the child to be at a custody exchange and for Father not to appear. The Order indicated if Father wished to re-establish his physical custody rights, he needed to simply file a petition for modification with the Court so that the matter could be brought before a Family Court Hearing Officer.

23. From approximately June through December, 2016, Mother would take the child to the exchange site for custody. The child would get excited about visiting Father, and when Father did not appear, the child would become upset and stressed by the experience.

24. Since the parties' separation, Father has never sent the child a Christmas present, birthday card or come to a school event for the child.

25. ZWB is currently in 1st grade at Ashkar Elementary School. Father has never attended an event for the child at Ashkar Elementary. Father never contacted the child's kindergarten teacher, nor has he contacted the child's 1st grade teacher to date.

26. ZWB is currently six years of age and has not seen Father since he was three years of age.

27. On November 26, 2017, the PFA entered by Mother against Father expired.

28. On May 8, 2018, Father sent Mother a letter indicating that he wished to get visitation set back up for ZWB, and that if she did not respond to him within one week, he would file a petition for contempt. Father provided his phone number in the letter of 570-419-1982, which is the same phone number that Mother has always used for Father, including the number she sent the text to in July, 2016.

29. On May 10, 2018, Father filed a Petition for Contempt alleging that he wished to start visitation back up, but has been told by Mother's family to break all ties. Attached to Father's Petition was the Custody Order entered January 7, 2015, which was not the most current Custody Order.

30. On June 12, 2018, Mother filed a Reply and Request for Sanctions outlining that Father's physical custody rights were temporarily suspended and that the

most recent Court Order provided that Father needed to file a petition for modification with the Court to re-establish his periods of physical custody.

31. Mother and Father were divorced by Order of Court dated June 22, 2018.

32. On July 30, 2018, Father filed a Notice with the Court withdrawing the Petition for Contempt.

33. On July 30, 2018, Father also filed a Petition for Modification of Custody. Said modification is still pending before the Court.

34. Father has resided at the following addresses:

Prior to 2016 – 181 Old Glade Run Road

Most of 2016 – November, 2017 – 1271 (B) Muncy Exchange Road,
Muncy

November 2017 – December 2017 – without a residence

January, 2018 – present – 2362 Route 405 Highway, Muncy

35. Father does not recall getting the letters from Mother's attorney in 2016 or notice of the Court hearing in December, 2016, or a copy of the Court Order. Father stated there is a good possibility he got the Court Order and letters, he just does not recall them.

36. The letters sent to Father in 2016, as well as the Court notices and orders were sent to 1271(B) Muncy Exchange Road, Muncy; the address Father states he was residing at during that time.

37. Father states that his visits with the child went well and steady until Mother threatened him with the PFA.

38. In June, 2016, through December, 2016, Father "picked up" an active addiction. Father was using pot, meth, and alcohol. He does not remember much from that time period.

39. Father's clean date is January 23, 2018. He currently has a sponsor. He is active in AA, counseling and church.
40. Father did not file anything in Court prior to May, 2018, because he was trying to get himself together.
41. Father has no explanation as to why he waited five months after being clean to pursue custody rights. Father stated "time goes by".
42. Father stated that he knew there would be consequences for putting it off.
43. Father does not believe his lack of contact with the child is a reason to lose his rights to his child.
44. Father stated he did not know his rights could be terminated following a period of no contact.
45. When questioned by the child's legal counsel, Father agreed that "I did take myself out of his life" (referring to the child).
46. The child refers to DT as "Dad" or "D_____".
47. DT treats the child as his son and provides for his needs. He sees himself as "basically ZWB's Dad".
48. DT wishes to adopt the child.
49. It is doubtful that the child would recognize Father.
50. The child and Mother recently ran into Father's adult daughter (AB). The child did not know his sister.
51. Father has had no relationship with the child since June, 2016, 28 months.
52. When asked about DT, the child told his legal counsel, "he is the dream of my heart and I want him to be my dad".

53. When asked about Father, the child told his legal counsel, “he is not my real dad, DT is my dad; I have not seen him in 10 years; he is not my dad anymore; I want DT to be my Dad”.

54. There currently exists no bond between Father and the child.

Discussion

Mother avers 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). 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 June of 2016.

A parent has an affirmative duty to be part of a child's life. It is clear that, at the time of the parties' separation in November, 2014, up to the time of the last Court hearing in May of 2016, Father did demonstrate an affirmative duty to be part of his child's life. Despite the fact that a Final Protection from Abuse Order was in place

prohibiting contact between he and Mother, Father, as a pro se litigant, filed several petitions with the Court to pursue his legal and physical custody rights of his son. Up until June of 2016, it appears that Father exercised his visits on a very regular basis, though it was clear at the time of the last Court hearing that was Father was contemplating relocating to North Carolina which is a significant distance from the child. Father attempts to convince the Court that the reason that he stopped appearing for custody exchanges to exercise visits with his son was due to threats made by Mother of filing a contempt of the PFA against Father. The Court does not find this reasoning to be legitimate. A Protection from Abuse Order was entered in November of 2014. Father violated the Temporary Protection from Abuse Order and was placed on probation in November of 2014 for a period of six months. There is no evidence in the Court docket or presented through testimony that indicates that there was any further trouble between Father and Mother in regard to the Final Protection from Abuse Order. The Court finds it disingenuous that Father would attempt to argue that a year and a half after the entry of the Final Protection from Abuse Order without any on-going incidents between the parties that this would now become the basis for him to stop visiting with his child. Additionally, it is clear from the multiple filings that Father made in the custody action, that Father was fully aware of how to file with the Courts to resolve issues in regard to custody and, if Father truly believed there was an issue with the Final Protection from Abuse Order as it related to the custody exchanges, this easily could have been addressed through the filing of a petition with the Court.

Father next argues that he became actively addicted sometime in June or July of 2016. The Court believes that this is probably most likely the reason that Father stopped having contact with his child. Unfortunately, during the time period of July,

2016, through January, 2018, when Father finally became clean, the child was continuing to grow and mature and had the need for a father figure in his life. During the time from June, 2016, through January, 2018, while Father was in his active addiction, Father failed to perform any parental duties whatsoever on behalf of the child. Once Father resolved his drug addiction issue and became clean, he still waited an additional five months before taking any further steps to re-establish himself in his son's life. During those five months, Father, again, failed to perform absolutely any parental duties on behalf of his child. Between June, 2016, and May, 2018, Father has not even exhibited a passive interest in his child's health, education or well-being.

During this time, Father basically abandoned his son and left him to be raised by his mother. It is during this time that DT stepped into the child's life and took on the parental duties for the child.

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 child. Once Father stopped appearing a custody exchanges, Mother sent Father a text offering make-up time and indicated that the child had missed him. Mother's counsel sent at least two letters to Father regarding the fact that he had been failing to appear at visits. Mother had the same law firm since prior to 2016, and has had the same phone number. For a period of 28 months, Father has shown no interest in being a parent to the child. The Court will acknowledge that Father did, in May of 2018, file with the Court in an attempt to re-establish his parental rights. In reaction to this, Mother has filed the instant Petition to Involuntarily Terminate Father's Parental Rights. The Court cannot find fault with Mother's actions in pursuing the Petition to Involuntarily Terminate Father's Parental Rights upon his filing of the custody action

with the Court. The child went through a period of several months of appearing at custody exchanges excited to see his father, only to be disappointed and upset when Father did not appear. These experiences caused stress for the child. Mother and DT have provided the child with stability and consistency which is paramount to the well-being of a healthy six-year-old.

Mother has, by clear and convincing evidence, met her 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 approximately 3 ½ years old at the time he last had contact with Father. Though it is clear the child understands that VB is his father, based upon his statements to his counsel, it is doubtful the child would independently recognize Father. The child has had no contact with Father in 28 months. He clearly has no bond with Father at this time. The child is bonded with Mother’s Husband, who has been a prominent figure in his life for several years. It is evident to the Court that Mother’s Husband loves and cares for child and treats him 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.

In his closing argument, Father's counsel argues that the termination of Father's parental rights is a very drastic action. Father's counsel argues that unlike an action in the dependency system for the termination of a party's parental rights, this is a private action where an individual does not receive advanced notice that their rights could be terminated if they do not adequately fulfill their parental duties. Father's counsel argues that in a dependency proceeding, a parent is given multiple opportunities and numerous Court appearances in an attempt to rectify the basis which could ultimately lead to the termination of their parental rights. While the Court acknowledges the argument being made by Father's counsel, there is no basis in law to support this position. Further, the Court finds that in this particular case, the child was very lucky to have at least one parent who stepped forward and took on sole parental responsibility for the child once the father walked out of the child's life. Father willingly allowed this to happen. There is no excuse for a parent who walked away from a child in excess of two years to not understand the implications that such abandonment can have on the child. The fact that Father argues that he had no idea that his rights could be terminated if he walked out on his child for two years is inconsequential to this Court's determination.

Conclusions of Law

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

2. The Court finds that SL has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of ZWB will best be served by termination of VB'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. 6606**
:
ZWB, :
:
minor child, :
:

DECREE

AND NOW, this **31st** day of **October, 2018**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of VB, held on October 26, 2016, it is hereby ORDERED and DECREED:

- (1) That the parental rights of VB 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