

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

IN RE: : **NO. 6637**
:
AP, :
:
minor child :
:

OPINION AND ORDER

AND NOW, this 15th day of **July, 2019**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Lycoming County Children and Youth Services (“Agency”) on May 1, 2019. The Agency seeks to involuntarily terminate the parental rights of MP to AP. The Petition for Involuntary Termination of Parental Rights, with notice of a pre-trial conference, was served upon Mother on May 1, 2019, by certified mail and first class mail, as evidenced by the Certificate of Service filed on May 2, 2019. A pre-trial conference on the Petition was held on May 21, 2019. Mother did not appear at the pre-trial conference, and it was noted that she had indicated to her counsel and the Agency on several occasions that she intended to voluntarily terminate her parental rights. The Court scheduled a hearing on the Petition for Termination of Parental Rights for July 8, 2019, but requested that both the Agency and Mother’s counsel continue to reach out to Mother to see if a voluntary consent to adoption could be obtained prior thereto. Following said conference, a second notice was served upon Mother advising her of the time, date, and location of the termination hearing. Pursuant to the Certificate of Service filed by the Agency, the certified mail return receipt was signed by TW and the regular mail was not returned. A hearing on the Petition to Involuntarily Terminate Parental Rights was held on July 8, 2019. John Pietrovito,

Esquire, was present on behalf of the Agency. Eric Birth, Esquire, of the Lycoming County Public Defender's Office, was present on behalf of Mother. Mother failed to attend the hearing and, consequently, her appointed counsel was released from the proceedings.

Finding of Facts

1. AP ("Child") was born on July 24, 2009.
2. MP ("Mother") is the biological mother of Child. Her last known address is 427 4th Avenue, Altoona, Pennsylvania 16602.
3. MW ("Father") is the biological father of Child. His last known address is 643 Elmira Street, Williamsport, Pennsylvania, 17701.
4. Father signed a Consent to Adoption on April 30, 2019.
5. On May 23, 2014, an Order appointing HS as Guardian of the Person and Guardian of the Estate of the Child was entered to Lycoming County Docket #41-14-0231. (Ex. 19) The Child had resided with HS since she was one year old and the Child knew HS as her mother.
6. The Agency first became involved on July 19, 2018, upon receiving a report that the Child was alone in the home following the unexpected death of HS. Emergency custody of the Child was granted to the Agency on this date.
7. The Child was placed in the kinship home of FW, who is the sister of HS.
8. A Shelter Care hearing was held on July 20, 2018. Mother attended this hearing and testified that the last time she saw the Child was when she was 2 years old. Mother further testified that she was unable to be a resource for the Child due to the fact that she was living in Altoona, Pennsylvania, and had other children to care for.

9. Mother did, however, request visits with the Child pending the dependency hearing. As the Child was unaware that Mother existed, the request was denied at the time and was to be further discussed at the dependency hearing.

10. A Petition for Dependency was filed on July 23, 2018, and a hearing was held on July 30, 2018, at which time the Child was found to be without proper care or control and adjudicated dependent.

11. Mother was present for the dependency hearing; however, she testified that she could not make a commitment to spending a significant amount of time with the Child. Visits were put on hold until such time as the Child was told that HS was not her mother.

12. A permanency review hearing was held on November 6, 2019. Mother attended, but the Court found that she had minimal contact with the agency during the review period. The Court further found that there was no compliance with the child permanency plan and that Mother had made no progress toward alleviating the circumstances which necessitated the original placement. (Ex. 8).

13. Mother had indicated that she did not wish to exercise her right to visit with the Child despite letters from the Agency explaining the importance of maintaining contact and establishing a bond if Mother wished to be reunified with the Child. (Ex. 25).

14. On January 23, 2019, the Agency filed a Motion for Finding of Aggravated Circumstances with regard to Mother, alleging that Mother has failed to maintain substantial and continuing contact with the Child for a period of six months. (Ex. 10).

15. A permanency review hearing was held on February 8, 2019. Mother did not attend.

16. The Court found that Mother had limited contact with the Agency and there had been no compliance with the child permanency plan. Additionally, Mother had made no progress toward alleviating the circumstances which necessitated the placement. (Ex. 11).

17. Also on February 8, 2019, this Court found that aggravating circumstances had been proven as to Mother in that Mother failed to maintain substantial and continuing contact with the Child for a period of six months. (Ex. 12).

18. The Agency filed a Petition for Involuntary Termination of Parental Rights on May 1, 2019.

19. On May 21, 2019, a permanency review hearing was held. Mother failed to attend, and the Court found that there had been no compliance on her part with the child permanency plan, nor had she made any progress toward alleviating the circumstances which necessitated the original placement. (Ex. 39).

20. On June 11, 2019, the Agency filed a Petition for Change of Goal, requesting to change the goal from reunification to adoption.

21. FW and her husband love the Child and wish to adopt her. The Child is thriving in their home.

22. The Child has no bond with Mother.

Discussion

Petitioner avers that the basis for termination in this case may be found in 23 Pa.C.S. §§2511(a)(1),(2), and (5) 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.
- (5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

Satisfaction of any one subsection of Section 2511(a) along with consideration of Section 2511(b) is sufficient for involuntary termination of parental rights. **In the Interest of K.Z.S.**, 946 A.2d 753, 758 (Pa. Super. 2008). While this Court believes that the Agency has presented sufficient evidence to satisfy all 3 subsections under which it seeks to terminate Mother's parental rights, this Court will focus on Sections 2511(a)(1) and (5).

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, Mother has unequivocally 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 filing of the Petition for Involuntarily Termination of Parental Rights, Mother has evidenced both a settled purpose of relinquishing parental claim to the Child and has failed to perform her 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. HP, ongoing case worker for the Agency, testified that Mother last saw the Child when she was 2 years old. When the Child was almost 5 years old, a court order was entered appointing HS as the Child's Guardian of the Person and Guardian of the Estate. (Ex. 19). Mother did not attend this hearing, which granted another person the authority to exercise the same legal rights as if she were the parent of the Child. This alone is evidence to the Court that Mother demonstrated a settled purpose of relinquishing parental claim to the Child several years prior to the filing of the Petition for Involuntary Termination of Parental Rights.

HP further testified that since the finding of dependency, she sent approximately 14 or 15 letters to Mother, many of which were to inform her of important hearing dates and to establish a visitation schedule for her. (Ex. 22-32, 40-41). None of the letters that were sent to Mother were returned to the Agency as undeliverable. HP testified that on September 26, 2018, she received an angry phone call from Mother indicating that she had too much going on in her life and did not have the ability to commit to regular visits with the Child. During the time the Child has been in the custody of the Agency, Mother never called her, sent cards or gifts to her, or provided any other financial support to or for the benefit of the Child. At each permanency review hearing, it was noted that Mother had no compliance with the child permanency plan and had made no progress toward alleviating the circumstances which necessitated placement. In fact, her total lack of effort to establish a relationship with the Child led to the Agency requesting - and this Court granting - a finding of aggravated circumstances against Mother for failing to maintain substantial and continuing contact with the Child for a

period of six months or more. Mother did not avail herself of any of the services the Agency offered, nor did she make any attempts to remedy the conditions which led to the Child's placement with someone other than her biological mother. This Court is confident, given Mother's utter lack of participation, communication, and engagement throughout the Child's life, and particularly since the Agency became involved, that Mother is not likely to remedy the conditions which led to the Child's placement within a reasonable period of time. This Court is satisfied that the Agency has proven by clear and convincing evidence that termination of Mother's parental rights is warranted under 23 Pa.C.S. §2511(a)(5).

Having found that grounds have been established for the termination of Mother's parental rights, 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 Mother. The Child was under two years of age when she last had contact with Mother and – in fact – knew another woman to be her mother until that woman unexpectedly passed away in July of 2018. Prior to and throughout the Agency’s involvement, Mother made no attempts to establish a relationship with the Child. The Child is now bonded with FW and EW, and is thriving in their home. The W’s have stepped in and provided food, clothing, and shelter as well as emotional support during a traumatic and confusing time for the Child. They are a bonded and established family unit. FW and EW have provided the love and security the Child needs and have assumed the parental responsibilities that Mother has evidenced a settled purpose of relinquishing.

The Court is satisfied that both FW and EW understand the potential consequences of adopting the Child, and that termination Mother’s parental rights and allowing the adoption by FW and EW to proceed is in the best interest of the Child.

Conclusions of Law

1. The Court finds that Lycoming County Children & Youth Services has established by clear and convincing evidence that MP's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that Lycoming County Children & Youth Services has established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of AP will best be served by termination of MP's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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IN RE: : **NO. 6637**
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DECREE

AND NOW, this 15th day of **July, 2019**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of MP, held on July 8, 2019, it is hereby **ORDERED and DECREED**:

- (1) That the parental rights of MP be, and hereby are, involuntarily 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 Human Services
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