

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

IN THE INTEREST OF:	:	NO. 6621
	:	
CAB,	:	
minor child	:	

OPINION AND ORDER

AND NOW, this 1st day of **May, 2019**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by father, TB, and his wife, KB, on December 18, 2018. Said petition is in regard to the rights of TB's child, CAB, born September 2, 2003. Father and his wife seek to terminate the parental rights of the child's biological mother, ALP, as a prerequisite to having the child adopted by father's wife. The Petition for Involuntary Termination of Parental Rights, with notice of a pre-trial conference, was served upon ALP by certified mail on January 11, 2019. A pre-trial conference on the Petition was held on March 4, 2019. Mother did not appear at the pre-trial conference. Following said conference, an Order was entered, advising ALP of the time, date, and location of the termination hearing, as well as her right to have separate counsel appointed to represent her and the child in the matter. The Order imposed a deadline of April 2, 2019, for mother to contact the Court to request counsel be appointed for her. The Court did not receive a response from mother. A hearing on the Petition to Involuntarily Terminate the Parental Rights was held on April 26, 2019. ALP did not appear. Both TB and KB appeared with their counsel, Denise Dieter, Esquire.

Finding of Facts

1. CAB ("Child") was born on September 2, 2003. The child currently resides with her father, TB ("Father"), and Father's wife, KB ("Stepmother"), at 668 Wildwood

Blvd., Williamsport, Lycoming County, Pennsylvania. The Child has a stepsister who resides at the home when she is not attending college.

2. The Child's biological mother is ALP ("Mother"). Mother's last known address is 183 High St., Sanford, Maine 04073.

3. At the time of the Child's birth, Mother and Father were unmarried.

4. A custody case between Mother and Father exists at Lycoming County Docket #05-20,753.

5. Beginning in 2012, Mother had physical custody of the Child for approximately 9 weeks each summer.

6. During the summer of 2017, several incidents occurred during Child's time in Mother's custody which resulted in the Child being scared and the police being called. These incidents included Mother ripping Child's glasses off her face and refusing to return them and Mother reading Child's diary and refusing to return it.

7. Father testified that the Child would develop nervous ticks before she'd leave for Maine. Father further testified that when she returned she was "a different person," and that he involved her in counseling for her depression.

8. Child's last intentional contact with Mother occurred on March 2, 2018, when Child sent Mother a text. Mother did not respond to Child's text.

9. On April 11, 2018, a custody trial was held with regard to a Petition to Modify filed by Father. Mother failed to attend.

10. Following the hearing, the custody order was modified to grant Father sole legal custody of the Child. Mother's physical custody was reduced to supervised visitation for two weeks each summer, to be exercised at the home of the maternal grandparents and supervised by the maternal grandparents.

11. During the summer of 2018, the Child only saw her Mother once during her two week visitation in Maine. This meeting was a chance encounter, and when Mother saw the Child, she screamed at her and told her to get out.

12. Aside from this brief encounter with Mother, the last time the Child had any meaningful contact with Mother was during the summer of 2017.

13. Since 2017, Mother has not sent any cards or gifts to the Child for her birthday or holidays. Mother has not written any letters or communicated via telephone.

14. Mother has a current support obligation in the amount of \$182.87 per month pursuant to Lycoming County Docket #08-21460. Said support is paid through a wage attachment.

15. Stepmother has been involved in the Child's life since approximately 2008.

16. The Child and Stepmother are very closely bonded and have a mother-daughter relationship.

17. The Child feels comfortable sharing her problems with Stepmother. She has never felt comfortable doing so with Mother.

18. Father and Stepmother are the ones to help the Child with school work and attend all of her doctor's appointments. Mother is not involved in these activities.

19. Child asked Stepmother to adopt her, as it was important for her to be able to tell people that she is her "mom," because Stepmother "is amazing."

20. Stepmother treats Child the same way she treats her own biological daughter.

21. Stepmother "absolutely" wants to adopt the Child.

22. Termination of Mother's parental rights and adoption by Stepmother is in the best interest of the Child.

Discussion

The Petition for Involuntary Termination of Parental Rights does not specify the basis for termination of Mother'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, Mother has evidenced both a settled purpose of relinquishing parental claim to the child and has failed to perform her parental duties for well in excess of six months.

A parent has an affirmative duty to be part of a child's life; Mother has clearly not met this affirmative duty. Although it appears that Mother has fairly consistently met her child support obligation through a wage attachment, parental duties encompass far more than a financial obligation. Mother's last meaningful contact with the Child was during the summer of 2017. During that period of time, Child testified that Mother was always sleeping or yelling, and Child had to endure several scary incidents including one where Mother ripped Child's glasses off her face and refused to give them back. The emotional distress that these incidents caused the Child prompted Father to petition

for a modification of their custody Order. As a result, for the summer of 2018, Mother was granted only a period of supervised visitation for two weeks. The Child stayed with her grandparents and Mother made no effort to exercise her period of supervised visitation. The Child saw Mother only one time during that summer, and that was a brief surprise encounter which ended in Mother screaming at the Child.

Since the summer of 2017, Mother has not called the Child. Mother did not respond to the Child's text in March of 2018. Mother has attended none of the Child's doctor's appointments or school or social events. Mother has not sent cards or gifts to the Child for her birthday or Christmas. The Court finds that Mother has not shown a continuing interest in the Child and that she has failed to meet the affirmative duty of maintaining a place of importance in the Child's life.

This Court further finds that Father and Stepmother have clearly established that Mother has evidenced a settled purpose of relinquishing parental claim to the Child and has refused or failed to perform parental duties for at least 18 months prior to the filing of the Petition for Involuntary Termination. This settled purpose of relinquishment is especially apparent given the fact that, despite being properly served, Mother failed to appear for the hearing on the Petition for Involuntary Termination.

As the statutory grounds for termination have been met, the Court must also 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. Termination of Mother’s rights would not destroy an existing necessary and beneficial relationship as the Child testified that she and Mother do not have a typical mother/daughter relationship. Child is clearly bonded to Stepmother, who has been a prominent figure in her life since she was a toddler. It is evident to the Court that Stepmother loves and cares for Child and treats her as her own. Child testified that she is comfortable sharing her problems with Stepmother, and that they do things together as a family, something that does not occur with Mother. Stepmother attends Child’s doctor’s appointments and

helps her with cyber school, and she provides emotional support and guidance to the Child. Stepmother has stepped in and provided the love and security the Child needs and has assumed the parental responsibilities that Mother has utterly failed to perform and has evidenced a settled purpose of relinquishing.

The Child asked for the adoption to occur, indicating that it was important to her to have Stepmother adopt her because she “wants to be able to tell people she’s her mom because she’s amazing.” The Court is satisfied that both Father and Stepmother understand the potential consequences of allowing Stepmother to adopt Child, and that termination of Mother’s parental rights and allowing the adoption by Stepmother to proceed is in the best interest of the Child.

Conclusions of Law

1. The Court finds that TB and KB have established by clear and convincing evidence that ALP’s parental rights to CAB should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that TB and KB have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of CAB will best be served by termination of ALP’s parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

Department of Human Services
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