

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

IN RE: : **NO. 6615**
:
ADOPTION OF JDS & JMS, :
minor children :

OPINION AND ORDER

AND NOW, this 31st day of **January, 2019**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by LMA and JMA on September 6, 2018, with regard to the rights of LMA's children, JDS, IV and JMS, both born September 11, 2002. Mother seeks to terminate the parental rights of the children's biological father, JDS, III, as a prerequisite to having the children adopted by her husband, JMA. A pre-trial conference was held on November 14, 2018, at which time the Petitioners were present and represented by Jason Lepley, Esquire, on behalf of Heather Willis Lewis, Esquire. JDS, III, although properly served with the Petition for Involuntary Termination of Parental Rights and notice of the pre-trial conference, failed to appear. Following the pre-trial conference, an Order was entered scheduling the hearing on the Petition for Involuntary Termination of Parental Rights for January 23, 2019, and indicated that if JDS, III, wished to participate in the hearing and have counsel appointed for him, he must advise the Court, in writing, by December 23, 2018. The Court received no response from JDS, III.

A hearing on the Petition was held on January 23, 2019, at which time LMA and JMA were present with their counsel, Heather Willis Lewis, Esquire. Father, though properly served, failed to appear.

Findings of Fact

1. JDS, IV, and JMS (collectively, "Children") were born on September 11, 2002. The children currently reside with their mother, LMA ("Mother"), and Mother's husband, JMA ("Husband"), at 1573 Northway Road Extension, Williamsport, Lycoming County, Pennsylvania.

2. Mother and Husband have been in a relationship for 13 years, and Husband has resided with Mother and the Children since September 2008.

3. The Children's biological father is JDS, III ("Father"). Father's last known address is 110 Wye Alley, Jersey Shore, Pennsylvania 17740.

4. At the time of the Children's birth, Mother and Father were unmarried but were in a relationship.

5. Mother and Father ended their relationship when the Children were two years old.

6. Father was in and out of jail when the Children were younger.

7. Mother, Father, and paternal grandmother are parties to a custody action in Lycoming County at Docket #08-21,342. By Order dated June 8, 2010, Father was granted custody of the Children every other weekend from after school on Friday until Sunday evening.

8. The custody order was modified on September 30, 2015. Under this Order, Mother and Father share legal custody of the Children. Mother has primary custody of the Children, and Father has periods of partial physical custody as he and Mother are able to agree.

9. Under the custody order dated September 30, 2015, the paternal grandmother has partial custody of the Children on the 2nd Friday of each month from 5:30 p.m. on Friday until 7:00 p.m. on Sunday, and is entitled to one week each summer for purposes of vacation.

10. Paternal grandmother does exercise her custodial time granted under the Order. Mother testified that she and paternal grandmother work well together and she grants grandmother extra time with the Children if it is requested.

11. Mother testified that she understands that even if Father's parental rights are terminated, paternal grandmother's periods of custody would continue.

12. Mother testified that Father and paternal grandmother currently do not have a relationship and that the Children do not contact Father when they are with grandmother.

13. Father and his girlfriend have a child together. The Children spend time with that sibling through the paternal grandmother.

14. Father last saw the Children in June of 2016. He took the Children hiking at Ricketts Glen State Park, but he did not exercise a period of overnight custody.

15. Mother reached out to Father's girlfriend and offered them time with the Children on Thanksgiving in 2016. Father and his girlfriend initially accepted the offer but later messaged Mother and told her they would not be exercising any custodial time with the Children.

16. Father messaged the Children in December of 2016 and told them that he was busy working out of town but that he missed them and upon his return he would pick them up and take them Christmas shopping.

17. Father never followed through with his promise to see the Children in December of 2016.
18. Father is obligated to pay child support. Mother indicated that he does make payments, but that there are arrears of approximately \$2000 on the case.
19. Since at least June of 2016, Father has not provided any cards or gifts to the Children for birthdays or holidays.
20. JMS messaged Father in June of 2018. When Father responded she told him how she felt about the situation.
21. The Children have cell phones. JDS, IV changed his phone number and wishes to have no contact with Father. Father has JMS's phone number.
22. JDS, IV wishes to change his name as he does not want to be named after or associated with Father.
23. Mother's address and cell phone number have not changed since Father's last contact with the Children.
24. Mother has not put up any obstacles designed to prevent Father from having contact with the Children.
25. Mother's Husband intends to adopt the Children.
26. Mother's Husband has a strong bond with the Children. They seek advice and discipline from him.
27. Husband has taken on all parental responsibilities and provides financial and emotional support for the Children.
28. The Children call Mother's Husband "Daddy Apple."

29. The Children have no relationship with Father. There is no bond between Father and the Children.

Discussion

Mother and her Husband aver 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). In the instant case, Father has 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 Involuntary Termination of Parental Rights, Father has evidenced both a settled purpose of relinquishing parental claim to the Children 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 Children was in June of 2016.

A parent has an affirmative duty to be part of a child's life. Mother testified that Father was in and out of jail when the Children were younger, but even when he was not incarcerated, he did not regularly tend to the Children's basic needs, such as feeding them and changing diapers. Mother testified that, despite a custody order which, for the period between June 8, 2010, and September 30, 2015, granted Father custody of the Children every other weekend, he regularly did not exercise those periods of custody. After the Order was modified on September 30, 2015, to provide

Father periods of custody as he and Mother were able to agree, Father's contact with the Children became even more limited.

Father last saw the Children in June of 2016, when he took them hiking, and returned them to Mother after a few hours. Father declined to exercise any time with the Children over Thanksgiving in 2016, even though Mother reached out to his girlfriend and offered the time. Father briefly messaged with the Children in December of 2016, and indicated that he planned to spend time with them but never followed through with that promise. Since last spending time with the Children in June of 2016, Father has not even acknowledged their birthdays or holidays, much less provided them with cards or gifts.

Mother testified that she has had the same address and phone number since the last time Father had any contact with the Children. She also testified that, although she deleted him as a "friend" on Facebook, she did not block him and he would have been able to send her messages. Mother further testified that both the Children have cell phones. Although JDS, IV has changed his number and does not wish for his Father to be able to contact him, Father does have JMS's number and could communicate with her. The Court finds Mother placed no obstacles in Father's path which would prevent him from exercising his parental rights, privileges, and obligations with regard to the Children. Simply put, Father failed to satisfy his affirmative duty to be a parent to the Children for at least 2 years prior to the filing of the petition to involuntarily terminate his rights.

Mother and her Husband have clearly established that Father evidenced a settled purpose of relinquishing parental claim to the Children and refused or failed to

perform parental duties for more than 2 years prior to the filing of the petition to involuntarily terminate his parental rights. This settled purpose of relinquishment is especially apparent given the fact that Father failed to appear for the hearing on the Petition for Involuntary Termination despite being properly served with notice, and therefore offered no explanation for his 2 year absence from the Children's lives. Mother and her Husband have, by clear and convincing evidence, met their 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 have not had contact with their Father for more than 2 years, and prior to that he rarely exercised the periods of custody granted to him by court order. Both Mother and her Husband testified that the Children have a deep bond with Husband which has developed during the 13 years that he has been a prominent figure in their lives. The Children call Mother's Husband "Daddy Apple." It is evident to the Court that Mother's Husband loves and cares for the Children and treats them as his own. Mother's Husband provides food, clothing, and shelter for the Children, as well as emotional support, advice, and guidance. They are a bonded and established family unit, and this is perhaps most evident by the Children's desire to change their last name to that of Mother's Husband. Mother's Husband has stepped in and provided the love and security the Children need. Mother's Husband 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 the Children, and that termination Father's parental rights and allowing the adoption by Mother's Husband to proceed is in the best interest of the Children.

Conclusions of Law

1. The Court finds that JMA and LMA have established by clear and convincing evidence that JDS, III's parental rights to JDS, IV, and JMS should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that JMA and LMA have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of JDS, IV, and JMS will best be served by termination of JDS, III'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. 6615**
:
ADOPTION OF JDS & JMS, :
minor children :

DECREE

AND NOW, this 31st day of **January, 2019**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JDS, III, held on January 23, 2019, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JDS, III, 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 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