

2. The Child's biological mother is BD ("Mother"). Mother resides in Lycoming County, Pennsylvania, and was represented by Jennifer Ayers, Esquire, throughout these proceedings.

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

4. In the early morning of November 9, 2015, the Paternal Grandparents received a phone call from the Mother to come to her home as Father was unresponsive and an ambulance had been called.

5. Father passed away in the early morning of November 9, 2015.

6. On the evening of November 9, 2015, the Paternal Grandparents received a call from Mother's mother-in-law indicating that Mother had been incarcerated and it was requested that the Paternal Grandparents pick the child up from the mother-in-law.

7. LM has remained in the primary physical custody of the Paternal Grandparents since November 9, 2015.

8. Mother has not had physical contact with the child since November 9, 2015.

9. Mother was incarcerated from November 9, 2015, until September, 2017.

10. On November 12, 2015, the Paternal Grandparents filed a Complaint for Custody against Mother when Mother was incarcerated seeking primary physical custody of the child.

11. A Custody Order was issued to Docket No. 15-21,459 in Lycoming County, Pennsylvania, on November 23, 2015, granting Paternal Grandparents shared legal custody of the child and primary physical custody of the child. The Order provided for Mother to have supervised visitation through Children & Youth upon her release from

incarceration and advised Mother that she was free to file a petition for modification of custody at any time.

12. In September, 2017, Mother contacted the Paternal Grandparents indicating that she wished to see the child.

13. Mother never made arrangements through Children & Youth for supervised visits as was provided in the parties' Custody Order.

14. From September, 2017, Mother has sent no letters, made any phone calls, provided any financial support, provided gifts, or had any physical contact with the child.

15. Currently, the child would have no knowledge as to who Mother was if he were to see her.

16. The child has no bond with Mother in light of the fact that he has not had contact with her since approximately three months of age.

17. The child is bonded closely to the Paternal Grandparents.

Discussion

The Paternal Grandparents argue that the basis for termination of parental rights 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 for Involuntary Termination of Parental Rights, Mother 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 was incarcerated from November, 2015 to September, 2017. During that time, she made no effort to contact the child.

Upon Mother's release from incarceration, however, she completely and utterly failed to fulfil her affirmative duty to maintain a place of importance in Child's life. The most recent custody order granted Mother supervised visits through the Children & Youth Agency. The Order also advised Mother she could file a petition for modification at any time. Mother did neither. She made one phone call to the Paternal Grandparents in September, 2017, and never follow up thereafter.

This Court finds that Paternal Grandparents 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 6 months prior to the filing of the Petition for Involuntary Termination. Mother has not seen the Child since he was three months old. Mother made no effort to see the child after her release from incarceration. Mother did not even appear at the hearing to defend the termination of her parental rights. Since her release from incarceration, nearly 2 years before the Paternal Grandparents filed their Petition for Involuntary Termination of Parental Rights, Mother

performed absolutely no parental duties for the Child, and failed to take any meaningful steps to enforce her rights under her custody order.

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 the averments that termination is also warranted under 23 Pa.C.S. §2511(a)(2). .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 has not seen Mother since he was approximately three months old. Child is clearly bonded to Paternal Grandparents, who have been a prominent figure in his life since November, 2015. It is evident to the Court that Paternal Grandparents love the Child and treat him as their own. Though the child refers to the Paternal Grandparents as "Mimi" and "Pop-pop", they are the only parental figure the child knows.

The Court is satisfied that the Paternal Grandparents' adoption of the child is in his best interest and will provide him with the stability and security the child needs and deserves to have throughout his childhood.

Conclusions of Law

1. The Court finds that CM and MM have established by clear and convincing evidence that BD's parental rights to LM should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).
2. The Court finds that CM and MM have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of LM will best be served by termination of BD'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