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

IN RE ADOPTION OF: : NO. 6645

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LM,

minor child :

#### **OPINION AND ORDER**

AND NOW, this 23<sup>rd</sup> day of December, 2019, before the Court is a Petition for Involuntary Termination of Parental Rights filed by the Paternal Grandparents, CM and MM on May 31, 2019. Said petition is with regard to the parental rights of LM, born August 6, 2015. Paternal Grandparents seek to terminate the parental rights of the child's biological mother, BD, as a prerequisite to having the child be adopted by them. The child's Father, TM was deceased on November 9, 2015. The Petition for Adoption and Petition for Involuntary Termination of Parental Rights, with notice of a pre-trial conference, were served upon BD on June 17, 2019. Jennifer Ayers, Esquire, is counsel of record for Mother, BD. Tiffani Kase, Esquire, was appointed as counsel for the child. A hearing on the Petition to Involuntarily Terminate the Parental Rights was held on December 23, 2019. CM and MM appeared with their counsel, Melody Protasio, Esquire. Tiffani Kase, Esquire, counsel for the child, appeared. Jennifer Ayers, Esquire, counsel for Mother appeared. BD, Mother, did not appear. Mother, BD, indicated to both her counsel and the child's counsel that she would not be appearing at the time of the hearing.

#### **Finding of Facts**

1. LM ("Child") was born on August 6, 2015. The child currently resides with CM and MM, the Paternal Grandparents, in Canton, Pennsylvania.

- 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.

<u>In re: Burns</u>, 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

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

IN RE ADOPTION OF: : NO. 6645

:

LM,

minor child :

#### **DECREE**

**AND NOW,** this **23<sup>rd</sup>** day of **December**, **2019**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of BD, held on December 23, 2019, it is hereby ORDERED and DECREED:

- (1) That the parental rights of BD 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 mother.

### 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 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