

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

IN RE ADOPTION OF:	:	NO. 6653
	:	
OBL¹,	:	
minor child	:	

OPINION AND ORDER

AND NOW, this 5th day of **December, 2019**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by mother, SL, and her fiancé, TC, on June 18, 2019. Said petition is with regard to the rights of SL's child, OBL, born December 1, 2016. Mother and her fiancé seek to terminate the parental rights of the child's biological father, KB, as a prerequisite to having the child adopted by mother's fiancé. A pre-trial conference on the Petition was held on September 6, 2019, after which Dance Drier, Esquire, was appointed as counsel for KB and Tiffani Kase, Esquire, was appointed as counsel for the child. A hearing on the Petition to Involuntarily Terminate the Parental Rights was held on November 26, 2019. SL and TC appeared with their counsel, Jennifer Ayers, Esquire. KB appeared and was represented by Dance Drier, Esquire. Tiffani Kase, Esquire, appeared on behalf of the child.

Finding of Facts

1. OBL ("Child") was born on December 1, 2016. He currently resides with his mother, SL ("Mother"), and Mother's fiancé, TC ("Mother's Fiancé"), at [redacted], Williamsport, Lycoming County, Pennsylvania.

2. The Child's biological father is KB ("Father"). Father resides at [redacted], Williamsport, Lycoming County, Pennsylvania.

¹ The minor child's middle name is listed as "R-----" in the caption of the Petition for Involuntary Termination of Parental Rights. However, it is listed as "R-----" on the child's birth certificate. This Court will assume the spelling listed on the birth certificate is the proper spelling and will defer to that spelling of the minor child's middle name.

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

4. Mother and Father separated in February of 2017, when the Child was approximately 2 months old. Mother remained in the residence with the Child and Father moved out.

5. Prior to their separation, Father performed basic parental duties for the Child.

6. Following the separation, Father had sporadic contact with the Child for the next 10 months at Mother's home. Father never took the Child anywhere alone and never had him overnight.

7. Father attended the Child's 1st birthday party at Mother's home. Father provided money to help with the expenses related to the party.

8. The 1st birthday party was the last meaningful contact Father had with the Child.

9. Father sent Mother a message on Father's Day 2018, requesting to see the Child. Mother was out of town and did not receive the message until that night. Father did not follow up with Mother or request alternate/additional time with the Child.

10. Mother and the Child saw Father at a local restaurant sometime after Father's Day in 2018. Father made eye contact with Mother but put his head down and did not attempt to speak to her or the Child.

11. Father filed a Petition for Emergency Custody on October 12, 2018, at Lycoming County Docket #18-21,379, alleging that the Child was being abused and neglected by Mother. Said petition was denied.

12. Father filed a Complaint for Custody on March 29, 2019. A custody conference was scheduled for May 17, 2019.

13. Mother filed an action for child support on March 29, 2019.

14. Father did not contest the entry of a child support order and has been making regular payments through a wage attachment.

15. The custody conference scheduled for May 17, 2019, was rescheduled to June 18, 2019, due to lack of service of the Complaint upon Mother. The conference was further continued until July 19, 2019, at the request of Mother's counsel due to Mother only being served the day prior to the conference.

16. On June 18, 2019, the instant Petition for Involuntary Termination of Parental Rights was filed.

17. On June 18, 2019, counsel for Mother filed a Motion to Stay Custody Proceedings due to the pending Petition for Involuntary Termination of Parental Rights.

18. Father failed to appear at the custody conference on July 19, 2019, and therefore his Custody Complaint was dismissed.

19. Although Mother moved from the residence she once shared with Father, she has maintained the same phone number and social media profiles for the past 3 years.

20. Since the Child's 1st birthday party, Father has not sent any cards or gifts to the Child on his birthday or holidays.

21. Since the Child's 1st birthday party, Father has not attended any doctor's appointments nor has he made any inquiries of Mother regarding the Child's health and well-being.

22. Since the Child's 1st birthday party, Father has never spent any time with the Child outside of Mother's presence.

23. Mother has a daughter from a prior relationship. Mother and her Fiancé have a 1 year old child together.

24. Father lives with his girlfriend and her 3 year old daughter. Father performs parental duties such as cooking, cleaning, bathing, providing financial support, comforting, and socialization for his girlfriend's child.

25. The Child calls Mother's Fiancé "Daddy."

26. The Child does not know who Father is, and would not recognize him.

27. Termination of Father's parental rights and adoption by Mother's Fiancé is in the best interest of the Child.

Discussion

Mother and Mother's Fiancé argue that the basis for termination of parental rights 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). 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, Father has failed to perform his parental duties for well in excess of six months.

A parent has an affirmative duty to be part of a child's life. Since the Child's first birthday, Father has shown, at best, a passive interest in the Child. Father filed a Petition for Emergency Custody on October 12, 2018, alleging abuse and neglect of the Child by the Mother. When the Petition was denied by this Court, Father took no further action until he filed a Complaint for Custody on March 29, 2019, the date on which Father was scheduled to appear for a hearing on a Petition for Involuntary Termination of Parental Rights with regard to Father's other child. The Court is skeptical that had Father not been faced with the potential termination of his parental rights to another child, he may not have ever made any attempts to assert his custodial rights to this Child.

Although Father has been paying Court-ordered child support through a wage attachment for several months, this is insufficient to fulfill his affirmative duty to make a genuine effort to maintain communication and association with the Child. Prior to Mother initiating an action for child support, Father did not voluntarily contribute anything towards the Child's basic needs – food, diapers, clothing, etc. Moreover, for approximately 18 months prior to the filing of the Petition for Involuntary Termination of Parental Rights, Father made no effort to provide the Child with love, protection, guidance, or support. Although Mother admittedly did not reach out to Father and offer specific periods of visitation with the Child, this Court finds that Mother placed no obstacles in Father's path which would have impeded his ability to see the Child. Mother's phone number had not changed since they lived together and she maintained the same social media profile. Father could have contacted her by either of these means to inquire about the Child's health and well-being, and to request to spend time with the Child. Father had a responsibility to utilize all available resources to preserve

the parental relationship with the Child. Even when Father made attempts to have a relationship with the Child, his efforts were minimal and he failed to follow through to ensure that he was able to cultivate and maintain a bond with the Child.

This Court finds that Mother and Mother's Fiancé have clearly established that Father has failed to perform parental duties for at least 6 months prior to the filing of the Petition for Involuntary Termination. Father acknowledged that he has not seen the Child since his first birthday party. Father has not attended a single doctor's appointment for the Child or sent him a gift or card for his birthday or the holidays. Father knows nothing about the Child's developmental milestones in the last two years. Father has not changed a diaper, given a bath, cooked a meal, or provided comfort to the Child since December of 2017. Interestingly, Father testified that he performs all of those duties, and more, for the 3 year old daughter of his girlfriend.

When pressed for an explanation of his absence from the Child's life, Father testified that he lived in a garage for 6-8 months and then "couch surfed" for a period of time before moving in to his current residence with his girlfriend and her 3 year old child. Additionally, Father was unemployed and therefore spent time working on himself in order to better enable him to parent the Child. While this Court commends Father for taking steps necessary to turn his life around, it is well settled that "parental rights are not preserved... by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with his or her immediate physical and emotional needs." **In re Adoption of Godzak**, 719 A.2d 365, 368 (Pa.Super.1998). Since the Child's first birthday, nearly 18 months before the filing of the Petition for Involuntary Termination of Parental Rights, Father performed absolutely no parental duties for the Child. When Father finally took a meaningful step to establish and enforce

his custodial rights, he failed to appear for the conference due to a “simple misunderstanding” of the hearing date, and therefore his petition was dismissed.

This Court is satisfied that Mother and Mother’s Fiancé have proven by clear and convincing evidence that Father has failed to perform parental duties for a period in excess of 6 months immediately preceding the filing of the Petition for Involuntary Termination of Parental Rights pursuant to 23 Pa.C.S. §2511(a)(1).

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 Father. Termination of Father's rights would not destroy an existing necessary and beneficial relationship as the Child has not seen Father since he was approximately 1 year old. Child is clearly bonded to Mother's Fiancé, who has been a prominent figure in his life since early in 2018, and with whom he has lived since December of 2018. It is evident to the Court that Mother's Fiancé loves and cares for Child and treats him as his own. The Child's counsel opined that the child is very bonded to Mother's Fiancé and refers to him as "Daddy." Given the Child's age and the amount of time that has passed since he has seen Father, he clearly has no bond with Father, despite Father's belief that a bond exists simply because he is the Child's biological father, and despite Father's desire to have the opportunity to develop a bond in the future. Simply put, Father had the opportunity to establish and maintain a bond with the Child since his separation from Mother and he failed to take advantage of it. Mother's Fiancé has stepped in and provided the love and security the Child needs and has assumed the parental responsibilities that Father has utterly failed to perform since the Child's first birthday.

Father testified that he recently re-established a relationship with his father, and he believes that it is "better late than never" for him to establish a relationship with the Child. Unfortunately for Father, his attempts can best be described as "too little, too late." Although Father now desires to be actively involved in Child's life, for the past two

years while he was not involved the Child was building a bond with Mother's Fiancé. Termination of Father's parental rights would have no negative effects on the Child because Father is a stranger to the Child.

The Court is satisfied that both Mother and Mother's Fiancé understand the potential consequences of allowing Mother's Fiancé to adopt Child, and that termination of Fathers parental rights and allowing the adoption by Mother's Fiancé to proceed is in the best interest of the Child.

Conclusions of Law

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

2. The Court finds that SL and TC have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of OBL will best be served by termination of KB's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Marc F. Lovecchio, Judge

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

IN RE ADOPTION OF: : **NO. 6653**
:
OBL², :
:
minor child :
:

DECREE

AND NOW, this **5th** day of **December, 2019**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of KB, held on November 26, 2019, it is hereby **ORDERED** and **DECREED**:

- (1) That the parental rights of KB be, and hereby are, terminated as to OBL;
- (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.

² The minor child's middle name is listed as "R-----" in the caption of the Petition for Involuntary Termination of Parental Rights. However, it is listed as "R-----" on the child's birth certificate. This Court will assume the spelling listed on the birth certificate is the proper spelling and will defer to that spelling of the minor child's middle name.

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,

Marc F. Lovecchio, Judge