

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

IN RE: : **NO. 6633**
:
PJH, :
:
minor child :

OPINION AND ORDER

AND NOW, this 8th day of **July, 2019**, before the Court is a Petition for Involuntary Termination of Parental Rights filed on March 19, 2019, by Mother, AM, and her husband, JH. Said petition is in regard to the rights of PJH, born August 5, 2008. AM and her husband seek to terminate the parental rights of WPH, II, the child's biological father, as a prerequisite to JH adopting the child. The Petition for Involuntary Termination of Parental Rights, Petition for Adoption, Act 101 Notices, and Consent to Adopt were served upon Father, WPH, II, by certified mail on April 23, 2019, as evidenced by the Affidavit of Service filed on May 14, 2019. A pre-trial conference on the Petition was held on May 10, 2019. Father did not attend this hearing. A hearing on the Petition to Involuntarily Terminate the Parental Rights of Father was held on July 1, 2019. Father did not appear, despite the Court finding that he had proper notice of the hearing. AM and JH appeared with their counsel, Melody Protasio, Esquire.

Finding of Facts

1. PJH ("Child") was born on August 5, 2008. The child currently resides with his Mother, AM, and her husband JH, at 281 School House Road, Montgomery, Lycoming County, Pennsylvania.
2. AM is the biological mother of Child.

3. WPH, II, is Child's biological father.
4. WPH, II, resides at 1428 Toledo Avenue, Tulsa, Oklahoma.
5. At the time of the Child's birth, Mother and Father were married.
6. Mother and Father separated in 2009.
7. Mother and Father were officially divorced on June 22, 2010.
8. AM was given primary custody of Child in a custody stipulation dated December 7, 2012, docketed to Lycoming County No. 09-21,625.
9. AM and JH were married in June 2019.
10. Father has only seen Child twice since 2009.
11. Father has not had contact with Child in approximately 6 ½ years.
12. Since Father's last contact with the Child, he has sent gifts on Christmas when Child was 5 and 6 years old. No other contact has been made, nor has Father attempted to speak to Child over the phone.
13. Father has contact information of Mother, and is aware of her address.
14. Mother has not taken action to prevent father from making contact with Child.
15. Father was served notice of this action on April 23, 2019.
16. Father has failed to attend hearings and has not made contact with this Court as instructed.

Discussion

AM and JH argue 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 evidenced both a settled purpose to relinquish parental claim and a failure to perform parental duties for a period in excess of six months. 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 filing of the Petition to Involuntarily Terminate his parental rights, Father has failed to perform his parental duties for a period in excess of six (6) months. Father's last contact with the Child was more than six years ago.

A parent has an affirmative duty to be part of a child's life; Father has clearly not met this affirmative duty. The last contact Father had with anyone in regard to his child was when he sent Christmas gifts when Child was only six years old. Father has not made contact with Mother to ask about Child's health or well-being, events in his life, nor has he asked to speak with Child in many years. Father is aware of where his child is and has demonstrated this by the fact that he has sent gifts to his son in the past. Father has failed to play any role in the medical and educational decisions regarding Child. 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 Child. Simply put, Father has shown no interest in being a parent to the Child. These actions, or lack thereof, are clear indication that Father has refused or failed to perform his parental duties for a period several years in excess of the six month statutory requirement.

This Court further finds that AM and JH have clearly established that Father has evidenced a settled purpose of relinquishing parental claim to Child. Father was provided notice of this action by certified mail on April 23, 2019. Despite being served proper notice, Father failed to appear for both the pre-trial conference and the hearing on the Petition for Involuntary Termination of his parental rights. Father's settled purpose of relinquishing his parental claim to Child was clearly evidenced by his failure to make any contact with this Court or opposing counsel. It is particularly telling of Father's complete disregard for the gravity of this proceeding that, when served with notice of this action, Father simply signed his certified mail receipt "F.U.!", constituting his only communication with anyone involved in this case. The lack of any effort on the part of Father to contest this action and his complete indifference to the severe consequences clearly demonstrate a settled purpose to relinquish his parental rights.

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 parental bond with Father. Termination of Father’s rights would not destroy an existing necessary and beneficial relationship. Father and the Child have not had any contact with each other in roughly six years. Child is bonded to Mother’s husband, JH, who has been a prominent figure in his life for the past three years. It is evident to the Court that JH loves and cares for Child and treats him as his own. Mother and JH provide food, clothing, and shelter for the Child, as well as emotional support. JH 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.

The Court is satisfied that both Mother and JH understand the potential consequences of JH adopting Child, and that termination Father’s parental rights and allowing the adoption by JH to proceed is in the best interest of the Child.

Conclusions of Law

1. The Court finds that AM and JH have established by clear and convincing evidence that WPH, II's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that AM and JH have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of PJH will best be served by termination of WPH, II's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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DECREE

AND NOW, this 8th day of **July, 2019**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of WPH, II, held on July 1, 2019, it is hereby ORDERED and DECREED:

- (1) That the parental rights of WPH, II, 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 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 17105-17111
Telephone: 1-800-227-0225

Medical history information forms may also be obtained locally by contacting one of the following agencies:

1. County 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