

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

IN RE: : **NO. 6627**
:
SMT, :
:
minor child :

OPINION AND ORDER

AND NOW, this 26th day of **June, 2019**, before the Court is a Petition for Involuntary Termination of Parental Rights filed on February 11, 2019, by Paternal Great Aunt, KR, now known as KR, and her husband, RR. Said petition is in regard to the rights of, SMT, born April 16, 2014. KR and her husband seek to terminate the parental rights of RB and MT, the child's biological parents, as a prerequisite to adopting the child. Father, RB, signed his Consent to Adoption on January 23, 2019. The Petition for Involuntary Termination of Parental Rights, Petition for Adoption, Act 101 Notices, and Consent to Adopt were served upon Mother, MT, by personal service on April 2, 2019, as evidenced by the Affidavit of Personal Service filed on April 3, 2019. A pre-trial conference on the Petition was held on April 5, 2019. Mother attended this hearing and expressed her desire to contest the termination of her parental rights. An Order was entered by this Court on April 8, 2019, appointing Dance Drier, Esquire, as counsel to represent Mother. A hearing on the Petition to Involuntarily Terminate the Parental Rights of Mother was held on June 21, 2019. MT did not appear, despite the Court finding that she had proper notice of the hearing. Due to Mother's failure to contact her appointed counsel as instructed and her failure to appear, appointed counsel was excused prior to the start of the hearing. Father, RB, appeared and

expressed his consent to the Child's adoption. KR and RR appeared with their counsel, Meghan Engleman Young, Esquire. Taylor Mullholand, Esquire, counsel for the child, was also present.

Finding of Facts

1. SMT ("Child") was born on April 14, 2014. The child currently resides with her Paternal Great Aunt, KR (now known as KR), and her husband RR, at 330 Smith Street, Jersey Shore, Lycoming County, Pennsylvania.
2. KR was given sole legal and physical custody of Child on August 18, 2016 by agreement of the parties.
3. KR and RR were married on February 9, 2019.
4. The Child's biological father is RB ("Father"). KR is Father's aunt. Father resides in Jersey Shore, Lycoming County, Pennsylvania.
5. Father has consented to the adoption of Child by KR and RR.
6. The Child's biological mother is MT ("Mother"). Mother is presumed to be living in Jersey Shore, Lycoming County, Pennsylvania.
7. At the time of the Child's birth, Mother and Father were unmarried.
8. The last contact between Mother and Child was on July 7, 2018.
9. Since Mother's last contact with the Child, she has not sent any cards, gifts, or made any phone calls to the Child for Child's birthday or other holidays.
10. Mother has KR' phone number. KR has had the same phone number since 2001.
11. Mother is aware of where the Child is and of the R's address.

12. Mother knows how to get in touch with KR if she wanted to inquire about the Child's health and well-being or make arrangements to see the Child.

13. KR has not done anything to prevent Mother from having contact with the Child.

14. Mother has a history of drug use, mental health issues, and disappearing for long periods of time without contacting anyone as to her location and condition.

Discussion

The Father in this case has consented to the Child's adoption and wishes to voluntarily terminate his parental rights. Therefore, the issue in this case centers on the termination of the parental rights of the Mother. KR and RR 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, Mother has refused or failed to perform her parental duties for a period of greater than 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 [her]self 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 her parental rights, Mother has failed to perform her parental duties for a period in excess of six (6) months. Mother's last contact with the Child was on July 7, 2018.

A parent has an affirmative duty to be part of a child's life; Mother has clearly not met this affirmative duty. The last contact Mother had with anyone in regard to her daughter was on December 17, 2018. During this call, Mother expressed an interest in visiting the Child. Mother never asked about the child's health or wellbeing, events in her life, nor did she ask to speak with the child. Mother was unable to provide KR with her current address and said "I haven't called because I fell in with the wrong people, but I'm doing better now." Mother never followed this call with an attempt to visit Child. The last communication Mother had with any party was in January of 2019. In this call Mother informed KR that she had been in a major car accident and suffered severe injuries. Mother confessed to KR that she had knowingly ridden in the car with an intoxicated driver. Again, Mother did not use this call to inquire about or ask to speak to her Child. Mother has not attempted to contact Child physically or over the phone since their last meeting on July 7, 2018, not even on holidays and special events such as Christmas, Mother's Day, or the Child's birthday. Mother is aware of where her child is and has demonstrated through previous phone calls that she has the contact information for KR and KR has not ignored her calls. Mother has failed to play any role in the medical and educational decisions regarding the Child. The Court finds KR placed no obstacles in Mother's path which would prevent her from exercising her parental rights, privileges, and obligations with regard to Child. Simply put, Mother has shown no interest in being a parent to the Child.

This Court further finds that KR and RR have clearly established that Mother has refused or failed to perform parental duties since at least July 7, 2018. This dereliction of duty is especially apparent given the fact that, despite knowing the date of this

hearing, multiple attempts by her attorney and others to contact her, and understanding the consequences of this proceeding, Mother failed to appear for the hearing on the Petition for Involuntary Termination.

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 Mother. Termination of Mother's rights would not destroy an existing necessary and beneficial relationship. Mother and the Child have not had any contact with each other since July 7, 2018, nearly one year ago. Child is bonded to KR and RR, who have been prominent figures in her life for the past three years. It is evident to the Court that RR and KR love and care for Child and treat her as their own. They provide food, clothing, and shelter for the Child, as well as emotional support. The KR and RR have stepped in and provided the love and security the Child needs and have assumed the parental responsibilities that Mother has utterly failed to perform.

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

Conclusions of Law

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

2. The Court finds that KR and RR have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of SMT will best be served by termination of MT'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 26th day of **June, 2019**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of MT held on June 21, 2019, it is hereby ORDERED and DECREED:

- (1) That the parental rights of MT 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 parents.

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