

3. At the time of the Child's birth, Mother and Father were unmarried.
4. On October 22, 2015, Father filed a Complaint for Custody in Lycoming County at Docket #15-21,376.
5. A custody conference took place on October 30, 2015, at which time the parties agreed to a schedule in which Mother was granted primary custody and Father was granted periods of partial custody.
6. On November 20, 2015, Father filed a Petition for Modification, alleging that the Child had resided with him since November 9, 2015, as a result of Mother's incarceration following the death of her husband due to a drug overdose.
7. At a custody conference on December 22, 2015, the parties reached an agreement. Father was granted primary physical custody of the Child. Mother was granted, upon her release from incarceration, visits with the Child at the Children and Youth agency at least two times per week based on availability. Said visits were to be observed by the Children and Youth agency.
8. Mother was incarcerated from November of 2015 until her release on August 14, 2017.
9. While Mother was incarcerated, she sent handmade cards and letters to the Child for birthdays and holidays. Mother also sent letters to Father requesting updates about the Child's health and well-being. Mother also requested that Father send her pictures of the Child.
10. Father wrote letters to Mother while she was incarcerated to keep her up-to-date regarding the Child's health, developmental progress, and other activities.
11. Mother requested visits with the Child while she was incarcerated but Father declined stating he did not feel it was appropriate.

12. Mother was permitted two phone calls per day while incarcerated. She would attempt to call the Child with her evening phone call but he would often be sleeping. Mother testified that she always used her morning phone call to speak to her sister and never used that time to attempt to contact the Child.

13. Mother resided at the Transitional Living Center in Williamsport following her release from incarceration in August of 2017 until December of 2017.

14. Mother attempted to call the home of Father's parents upon her release from prison, but was told by Father's sister that he was on vacation in North Carolina.

15. Mother did not provide Father or his family with the number to the Transitional Living Center because she believed that it would have shown up on their Caller ID.

16. Mother testified that she did not receive notice that Father and the Child relocated to Blossburg, approximately 8 miles away from his parents' home. However, Mother did acknowledge that Father did receive the modification paperwork she mailed to his parents' home.

17. Mother has lived in the South Williamsport/Duboistown area since January of 2018. Mother did not reach out to Father when she left the Transitional Living Center to inform him of her new residence.

18. Mother saw Father, Stepmother, and the Child at the Troy Fair in August of 2018. Stepmother testified that Mother did not approach them but Mother testified that Stepmother picked up the Child and ran out before she had the opportunity to speak to them.

19. Mother filed a Petition for Modification of Custody on April 2, 2019.

20. Mother sent Child a birthday card in April of 2019.

21. Mother has other children, and she was involved in several court proceedings regarding custody of those children following her release from incarceration.

22. Mother has not seen the Child since he was 18 months old.

23. Stepmother has been involved in the Child's life since Father was awarded primary custody.

24. The Child and Stepmother are very closely bonded and have a mother-son relationship.

25. The Child calls Stepmother "Mom."

26. The Child does not know who Mother is, and would not recognize her.

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

Discussion

Father and Stepmother 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. While Mother was incarcerated, she wrote letters to Father requesting updates on the Child's health and well-being. She sent homemade cards to the Child for birthdays and holidays. She attempted to contact the Child by telephone, although she was only successful in speaking to him occasionally. Despite the limitations that are the natural consequences of incarceration, Mother used the resources available to her at the time to enable her to be involved in the Child's life.

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 - upon her release from incarceration - a minimum of two visits per week with the Child. Mother testified that she attempted to call Children & Youth when she was released from incarceration to set up the visits but she did not receive a return phone call from the agency or from Father. Mother did not file a petition for contempt in order to enforce her rights under the order. Instead, Mother simply gave up trying to see the Child.

Mother saw Father, Stepmother, and the Child at the Troy Fair in August of 2018, approximately one year after she was released from incarceration. Although there was no interaction between Mother and the Child, the incident still did not trigger Mother to take action to re-establish or enforce her custodial rights to the Child. Mother did not file her Petition for Modification of Custody until April 2, 2019, nearly 20 months after her

release from incarceration. Ironically, Mother was heavily involved in the Court system during this time while she was attempting to regain custody of her other children. She had an attorney and was at least somewhat familiar with the process. Mother herself testified that she did not have an excuse for her lack of effort to regain custody of this particular child.

This Court finds that Father and Stepmother 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 acknowledged that she has not seen the Child since he was 18 months old. Mother testified that after her release from incarceration, she spent time working on herself in order to better enable her to parent the Child, including obtaining stable housing and a promotion at her job. Mother also focused on her court battle to regain custody of her daughter, whom she testified was returned in December of 2018, 4 months before she filed Petition for Modification regarding custody of the child who is the subject of this action. While this Court commends Mother for taking steps necessary to turn her 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 her release from incarceration nearly 2 years before Father filed his 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 18 months old. Child is clearly bonded to Stepmother, who has been a prominent figure in his life since Father was granted primary custody in December of 2015. It is evident to the Court that Stepmother loves and cares for Child and treats him as her own. The Child's counsel opined that the child is very active, smart, and happy, and refers to Stepmother as "Mom." Given the Child's age and the amount of time that has passed since he has seen Mother, he clearly has no bond with Mother. Stepmother has stepped in and provided the love and security the Child needs and has assumed the parental responsibilities that Mother has utterly failed to perform since her release from incarceration nearly 2 years before the Petition for Involuntary Termination of Parental Rights was filed.

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

Conclusions of Law

1. The Court finds that RLC, III, and AC have established by clear and convincing evidence that BD's parental rights to TM should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that RLC, III, and AC have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of TM 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