

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

IN RE: : **NO. 6638**
:
AC and :
BC, :
:
minor children :

OPINION AND ORDER

AND NOW, this 3rd day of **January, 2020**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by father, RC, II, and his wife, LC, on April 22, 2019. Said Petition is with regard to the rights of RC, II's children, AC, born June 17, 2007; and BC, born September 5, 2009. RC and his wife seek to terminate the parental rights of the children's biological mother, ASC, as a prerequisite to having the children adopted by LC. The Petition for Involuntary Termination of Parental Rights was personally served upon ASC at the Lycoming County Prison on April 30, 2019.

ASC and RC, II are parties to a custody action at Lycoming County docket #14-20,555. At approximately the same time the Petition for Involuntary Termination of Parental Rights was filed, RC filed an Expedited Motion to Stay the Custody Order of October 17, 2017. A hearing was scheduled for May 22, 2019, at which time ASC personally appeared and requested a continuance so that she could be represented by an attorney. The Court granted the request for a continuance, but held a short hearing to determine whether the custody order in place should be adjusted pending the continued hearing. The Court heard testimony from RC, II regarding his concerns for the children's safety and their emotional well-being if ASC were permitted to continue to exercise her custody rights. Additionally, the Court heard testimony from ASC, who

confirmed that she had not seen her children for approximately one year prior to the hearing, and that she had a history of drug use in the past. She testified that she made no attempts to exercise or enforce her custodial rights because she wasn't allowed on the property of RC, but acknowledged when questioned that according to the custody order she was to pick up the children from school at the beginning of her periods of custody, thereby eliminating the need to have any contact with RC. Following the testimony, the Court determined that ASC's periods of custody should be suspended until the parties could return to court for a full hearing on the Motion to Stay Custody.

A Pre-Trial Conference on the Petition was held on June 7, 2019. Though properly served with notice of the Conference, ASC did not appear at the Pre-Trial Conference. An Order was entered on June 7, 2019, scheduling a hearing on the Petition for Involuntary Termination of Parental Rights and advising ASC that if she wished to participate have counsel appointed for her, she was to advise the Court in writing by June 28, 2019. ASC did not contact the Court concerning her participation in the hearing or the appointment of counsel on her behalf.

The continuation of the hearing on the Motion to Stay Custody was held on June 18, 2019. Neither ASC nor an attorney appeared on her behalf. Meghan Young, Esquire, who represents RC, II, indicated to the Court that she had spoken with Andrew J. Katsock, III, Esquire, who discussed the matter with ASC but had not been formally retained to represent her. After hearing brief testimony from Pennsylvania State Police Trooper Jonathan Thompson, and a recap of the prior hearing from Attorney Young, the Court determined that ASC continued to be an active drug user and was living a transient lifestyle, and that the children would not be safe in her care. The Court granted

the request to suspend ASC's physical custody rights pending the hearing on the Petition for Termination of Parental Rights.

On August 27, 2019, at a time set for the hearing on the Petition for Involuntary Termination of Parental Rights, Andrew J. Katsock, III, Esquire, appeared on behalf of ASC. However, ASC did not appear and Attorney Katsock candidly admitted that he had not had much contact with her and he was retained by her family to represent her in this matter. At that time, the Court felt it had no choice but to continue the hearing to a later date and to appoint counsel on behalf of the children. By order dated August 27, 2019, Tiffani Kase, Esquire, was appointed counsel for the children and the hearing on the Petition for Involuntary Termination of Parental Rights was scheduled for December 4, 2019.

On December 4, 2019, at the time scheduled for a hearing on the Petition for Involuntary Termination of Parental Rights, RC, II and LC were present and represented by Meghan Young, Esquire. Tiffani Kase, Esquire, was present on behalf of the children. Andrew J. Katsock, III, Esquire, was present on behalf of ASC, who failed to appear. Attorney Katsock represented to the Court that ASC's mother informed him that despite being aware of the proceeding and the significance of the matter, she would not appear. He requested a continuance on behalf of his client; however, having been provided with no proof of health issues or other extraordinary circumstances, this Court denied the request and proceeded with the hearing in ASC's absence. In addition to brief testimony from RC, II and LC, this Court was presented with transcripts of the testimony of the two hearings held pursuant to Father's Motion to Stay Custody, the content of which have been incorporated into this matter.

Finding of Facts

1. AC was born on June 17, 2007. BC was born on September 5, 2009. Hereafter, the Court will refer to the children collectively as “Children”. The Children currently reside with their father, RC, II (“Father”), and his wife, LC (“Stepmother”), at 163 Tall Doe Lane, Montgomery, Pennsylvania. Father and Stepmother have resided together since July of 2014, and have been married since May 15, 2017.

2. The Children’s biological mother, ASC (“Mother”), was most recently known to reside at the home of her grandmother in Montgomery, Pennsylvania. However, she has been reported to be transient

3. At the time of the Children’s birth, Mother and Father were married.

4. Mother and Father separated in January of 2014 and divorced in March of 2015.

5. Father and Stepmother started their relationship in the Spring of 2014, and Stepmother met the Children a few months later.

6. Father and Stepmother were married in May of 2017.

7. Prior to October of 2017, Mother and Father shared legal and physical custody of the Children.

8. Mother has a history of drug use. One incident was witnessed by AC, and was a focal point of the custody trial in October of 2017.

9. The current custody order is dated October 18, 2017, and grants Father primary custody of the Children. Mother has periods of physical custody every other weekend and certain nights during the week until 7:00 p.m.

10. Mother only sporadically exercised her physical custody rights from October of 2017 until March of 2018.
11. Mother exercised no physical custody rights after March of 2018.
12. Mother has not sent the Children any gifts for their birthdays or Christmas since 2017.
13. Mother has not attended any of the Children's doctor appointments, school functions, or sporting events since June of 2018.
14. Maternal grandmother lives approximately 2 miles from Father but has not contacted him to inquire about the Children or attempt to see them.
15. AC signed a Consent to Adopt on November 21, 2019.
16. The Children currently have no relationship with Mother.
17. Stepmother is actively involved in all aspects of the Children's lives, and provides the love and stability that they have not received from Mother.
18. The Children see Stepmother as "mom."

Discussion

Father and Stepmother 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 demonstrated both. 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 filing of the Petition for Involuntary Termination of Parental Rights, Mother has evidenced both a settled purpose of relinquishing parental claim to the Children and has failed to perform her parental duties for a period well in excess of six (6) months.

A parent has an affirmative duty to be part of the Children's lives; and Mother has clearly not met this affirmative duty. Despite an October 18, 2017, Court Order granting her specific periods of physical custody, Mother has not even shown a passive interest in the Children. At the initial hearing on Father's Motion to Stay, Mother testified that she believed that Father and Stepmother were alienating the Children from her, and that she could not go to Father's house to pick up the Children because he would have her arrested if she was on her property. However, pursuant to the terms of their custody order, Mother was to pick up the Children at their school to begin her periods of custody, and therefore there would be no need to have any contact with Father during the exchanges. If Mother felt that Father was preventing her from exercising her periods of custody, she should have utilized the court system to enforce her rights. Following their custody trial in October of 2017, Mother would only sporadically exercise her periods of custody. The last time she exercised physical custody of the Children was in March of 2018. The last time Mother laid eyes on the Children was in June of 2018, when she attended a baseball game. She stood in the outfield for 2-3 innings and left without saying a word to either Father or the Children.

Mother has failed to reach out to Father to inquire about the Children despite knowing how to contact him. Mother's mother lives approximately 2 miles away from Father, yet none of her family members have contacted him to see the Children. Mother

has failed to play any role in the medical and educational decisions regarding the Children, despite having shared legal custody pursuant to the Order of October 18, 2017. Mother has not sent any birthday or Christmas gifts to the Children since 2017. The Court finds Father placed no obstacles in Mother's path that would prevent her from exercising her parental rights, privileges, and obligations with regard to the Children. In fact, Father testified that he would text Mother the Children's softball and baseball schedules, doctor and dentist appointments, and school schedules and would receive absolutely no response from Mother. Simply put, Mother has shown no interest in being a parent to her Children.

This Court further finds that Father and Stepmother have clearly established that Mother has evidenced a settled purpose of relinquishing parental claim to the Children and has refused or failed to perform parental duties since March of 2018. This settled purpose of relinquishment is especially apparent given the fact that, despite being properly served, Mother failed to appear for the Pre-Trial Conference and the Hearing on the Petition for Involuntary Termination of 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 Children 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 that whatever bond the Children at one time had with Mother has deteriorated over the past several years due to Mother’s erratic behaviors and inconsistency. At this point, termination of Mother’s rights would not destroy an existing necessary and beneficial relationship as the Children were often subjected to verbal abuse and instability when in Mother’s care due to her opioid use. The Children’s counsel indicated that the Children are incredibly intelligent, engaging, and social despite Mother’s conduct and attributes these traits to Father and Stepmother. The Children are clearly bonded to Stepmother, who has been a prominent

figure in their lives for the past five years. The Children's counsel indicated that the Children "adore" Stepmother and with her their needs are met and there is stability. It is evident to the Court that Stepmother loves and cares for the Children and treats them as her own. Stepmother cooks meals for the Children, does their laundry, attends their sporting events and doctor appointments, and helps with homework. According to their counsel, the Children have never felt safe or loved by Mother, and they do not want to see her ever again. Stepmother has stepped in and provided the love and security the Children need and has assumed the parental responsibilities that Mother has utterly failed to perform and has evidenced a settled purpose of relinquishing.

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

Conclusions of Law

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

2. The Court finds that RC, II and LC have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of AC and BC will best be served by termination of ASC's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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IN RE: : **NO. 6638**
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DECREE

AND NOW, this 3rd day of **January, 2020**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of ASC, held on December 4, 2019, it is hereby ORDERED and DECREED:

- (1) That the parental rights of ASC be, and hereby are, terminated as to the children above-named;
- (2) That the welfare of the children will be promoted by adoption; that all requirements of the Adoption Act have been met; that the children 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 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