

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

IN RE: : **NO. 2020-6702**
:
ADOPTION OF :
BJW, :
:
minor child :

OPINION AND ORDER

AND NOW, this 2nd day of **October, 2020**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by GJW and his paramour, JDW, on June 15, 2020.¹ Said petition is with regard to the paternal rights of BJW, born November 28, 2015. GJW is the paternal grandfather of BJW. GJW and JDW seek to terminate the parental rights of the child's biological mother, JAF, as a prerequisite to adopting the child. The child's biological father, RJW, signed a consent to adopt on September 1, 2019. A pre-trial conference on the Petition was held on July 17, 2020; however, counsel for GJW and JDW was unable to serve JAF with notice. An Order was entered by this Court on July 17, 2020, advising JAF that if she wished to participate in the hearing on the termination of her parental rights and have counsel appointed for her, she must advise the Court in writing by September 9, 2020, so that counsel could be appointed on her behalf. The Petition for Involuntary Termination of Parental Rights and hearing notice, as well as the Order dated July 17, 2020, were served upon JAF on September 4, 2020, as evidenced by an Affidavit of Personal Service signed by Michael Cassel of API Investigations. JAF had no contact with the Court concerning her participation in the hearing or the appointment of counsel on her behalf. A hearing on the Petition to Involuntarily Terminate JAF's Parental Rights was

¹ GJW and JDW were married on September 8, 2020, and JDW is now known as JW.

held on September 29, 2020. JAF did not appear, despite the Court finding that she had proper notice of the hearing. GJW and JDW appeared with their counsel, William A. Hebe, Esquire.

Finding of Facts

1. BJW (“Child”) was born on November 28, 2015. The Child currently resides with paternal grandfather, GJW (“Grandfather”) and his wife, JDW (“Grandmother”) at 336 Brick Church Road, Liberty, Pennsylvania. Grandfather and Grandmother have been married since September 8, 2020, but they have been in a relationship since prior to the Child’s birth.

2. The Child’s biological father is RJW (“Father”), born July 4, 1991. Father is currently incarcerated at Quehanna Boot Camp in Karthaus, Pennsylvania.

3. The Child’s biological mother is JAF (“Mother”), born August 20, 1986. Mother’s last known address is 2217 S. 3rd Street, Steelton, Pennsylvania.

4. At the time of Child’s birth, Mother and Father were not married, nor have they ever been married.

5. For approximately 6 months after the Child’s birth, Mother and Father lived together with the Child at the home of Grandfather and Grandmother.

6. Mother was incarcerated from October 2016 to December 2016. Upon her release from incarceration, Mother was not welcome to return to the home of Grandfather and Grandmother and therefore resided in a homeless shelter.

7. Mother requested to see the Child on Christmas, 2016. Grandfather and Grandmother took the Child to the homeless shelter for the visit.

8. Approximately 2 hours into the visit, Mother requested Grandfather come pick up the Child.

9. Shortly after December 25, 2016, both Mother and Father went on the run from the law.

10. At no time has Mother filed any type of custody action or requested periods of custody with the Child since December 25, 2016.

11. Mother was ordered to pay child support but quit her job after 2 wage attachments were received by Grandfather. Mother has paid a total of \$189 in child support since December 25, 2016.

12. Mother has not sent the Child any cards or gifts for birthdays, Christmas, or other holidays.

13. Mother is aware of the address and phone number for Grandfather and Grandmother but has not reached out to them to inquire about the Child.

14. The Child has several special needs and is heavily involved in counseling and other interventional programs. Grandfather and Grandmother are committed to continuing counseling.

15. The Child calls Grandfather "Poppy" and Grandmother "Mimi."

16. Child has no relationship with Mother and would not recognize or know her if he were to pass her on the street.

17. Grandfather and Grandmother have provided for all of Child's needs since at least December 25, 2016.

18. Grandfather and Grandmother desire to adopt the Child.

Discussion

Grandfather and Grandmother 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 the Petition for Involuntary Termination of Parental Rights was filed, Mother has evidenced both a settled purpose of relinquishing parental claim to the Child and has failed to perform her parental duties for a period well in excess of six (6) months. Mother's last in-person contact with the Child was on Christmas of 2016, when the Child was just over one year old. For nearly four years, Mother has not financially supported the Child, with the exception of \$189 of child support received through a total of two wage attachments. Mother has not attempted to contact Grandfather or Grandmother to inquire about the Child, nor has she asked to see the Child. Grandmother testified that Mother has their address and phone numbers but has not reached out to them since the last time she saw the Child.

A parent has an affirmative duty to be part of a child's life; Mother has clearly not met this affirmative duty. Mother has not even shown a passive interest in the Child for most of the Child's life. Mother failed to reach out to Grandfather and Grandmother to inquire about the Child despite knowing how to contact them. Mother failed to use the court system to establish or enforce her parental rights. Mother failed to provide for, or even contribute to fulfilling the Child's basic needs. The Court finds Grandfather and Grandmother placed no obstacles in Mother's path that would prevent her from exercising her parental rights, privileges, and obligations with regard to Child.

This Court further finds that Grandfather and Grandmother 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 a period far in excess of six months. This settled purpose of relinquishment is especially apparent given the fact that, despite being properly served, 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 that Child has no bond with Mother. The Child last saw Mother for a two hour period on December 25, 2016. Termination of Mother's rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Mother and the Child, and there has been no relationship between the two since the Child was approximately one year old. Child is bonded to Grandfather and Grandmother, who have been in Child's life since his birth, and who have provided love, guidance, and support for the Child in addition to fulfilling his basic needs. It is evident to the Court that Grandfather and Grandmother deeply love and care for the Child and are committed to ensuring that he receives the counseling and support he needs. Grandfather and Grandmother have stepped in and 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 Grandfather and Grandmother understand the potential consequences of adopting the Child, and that termination Mother's parental rights and allowing the adoption by Grandfather and Grandmother to proceed is in the best interest of the Child.

Conclusions of Law

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

2. The Court finds that GJW and JDW have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of BJW will best be served by termination of JAF's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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

IN RE: : **NO. 2020-6702**
: :
ADOPTION OF : :
BJW, : :
: :
minor child : :

DECREE

AND NOW, this 2nd day of **October, 2020**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JAF, held on September 29, 2020, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JAF 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 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 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