

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

IN RE ADOPTION OF	: ORPHANS' COURT
CDS,	: DIVISION
Minor child	:
	:
	:
	: No 6664

ORDER

AND NOW, this 3rd day of March, 2020, the Opinion and Order and Final Decree issued February 3, 2020, terminating the parental rights of JS, Jr. to his son, CDS are hereby VACATED. The parental rights of the biological father were terminated under the premise that the biological mother's fiancé, WM would adopt the child. The Court has just learned that on this date, the biological mother, KW and her fiancé, WM are deceased. There is no longer a viable adoption for the child.

By The Court,

Joy Reynolds McCoy, Judge

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

IN RE ADOPTION OF:	:	NO. 6664
	:	
CDS,	:	
minor child	:	

OPINION AND ORDER

AND NOW, this 3rd day of **February, 2020**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by mother, KW, and her fiancé, WM, on September 25, 2019. Said petition is with regard to the rights to the child of KW, CDS, born November 20, 2010. Mother and her fiancé seek to terminate the parental rights of the child's biological father, JS, Jr., as a prerequisite to having the child adopted by WM. A pre-trial conference on the Petition was held on November 1, 2019, after which Dance Drier, Esquire, was appointed as counsel for JS, Jr., and Patricia Shipman, Esquire, was appointed as counsel for the child. A hearing on the Petition for Involuntary Termination of Parental Rights was held on January 27, 2020. KW and WM appeared with their counsel, Melody Protasio, Esquire. Dance Drier, Esquire, appeared on behalf of JS, Jr., who, despite having notice of the hearing, failed to appear. After requesting a continuance on behalf of his client which was subsequently denied, this Court excused Attorney Drier from the hearing. Patricia Shipman, Esquire, appeared on behalf of the child.

Finding of Facts

1. CDS ("Child") was born on November 20, 2010. He currently resides with his mother, KW ("Mother"), and Mother's fiancé, WM ("Mother's Fiancé"), at 765 Mt. Zion Hill Road, Hughesville, Lycoming County, Pennsylvania.

2. The Child's biological father is JS, Jr. ("Father"). Father's last known address is 152 Boak Avenue, Lot 22, Hughesville, Lycoming County, Pennsylvania.
3. At the time of the Child's birth, Mother and Father were unmarried but in a relationship.
4. Mother and Father separated in December of 2010, shortly after the Child's birth.
5. Following the separation, Mother moved in with her parents in Hughesville, Pennsylvania, while Father continued to reside in the home in Lewisburg they shared together.
6. Following the separation, Mother would attempt to facilitate contact between Father and the Child, and would drive the Child to Lewisburg since Father did not have a driver's license.
7. Mother initiated all contact with Father for the Child's first year. Her contact with Father ended when Father moved out of state and did not provide a number for Mother to contact him.
8. Father has not physically seen the Child since the Child was approximately 1 year old.
9. Initially, Father would send Mother 1-2 messages per year, but these messages never contained any specific requests to see the Child or attempts to establish a relationship with the Child.
10. Mother's last message from Father was received in 2014.
11. Father has never sent the Child cards or gifts for Christmas or his birthday.

12. Father filed a Complaint for Custody on August 16, 2019, to Lycoming County docket #19-20,717.
13. A custody conference was held on September 27, 2019. The parties were unable to reach an agreement and an order was entered which was consistent with the status quo and therefore granted no temporary physical custody rights to Father. A pre-trial conference was scheduled for December 11, 2019.
14. Mother filed a Petition to Stay the custody proceedings, which was denied after argument on October 3, 2019.
15. A pre-trial conference was held on December 11, 2019. Father failed to appear.
16. A custody trial is scheduled for February 19, 2019.
17. Mother's Fiancé has been in the Child's life since the Child was 9 months old.
18. The Child is unaware that Mother's Fiancé is not his biological father.
19. The Child calls Mother's Fiancé "Dad."
20. The Child does not know who Father is, and would not recognize him.
21. Mother and Mother's Fiancé have a 6 year old daughter together. Mother, Mother's Fiancé, Child, and his sister are a bonded family unit.
22. Mother's Fiancé treats the Child as his own and desires to adopt him.
23. Termination of Father's parental rights and adoption by Mother's Fiancé is in the best interest of the Child.

Discussion

Mother and Mother's Fiancé 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 filing of the Petition for Involuntary Termination of Parental Rights, Father has failed to perform his parental duties for well in excess of six months.

A parent has an affirmative duty to be part of a child's life. Father has utterly failed to fulfill this duty and has neglected to show even a passive interest in the Child. Mother vacated the home she shared with Father shortly after the Child's birth. For the following year, Mother initiated all contact between Father and the Child. Mother's attempts to establish and maintain a bond between Father and the Child came to a halt when the Child was approximately 1 year old and Father moved out of state and did not provide her with any contact information for him. Father's last physical contact with the Child was before the Child's first birthday. Father sporadically messaged Mother until 2014, but never made any specific requests or arrangements to see or spend time with the Child. In fact, Father took no absolutely no action to be an active participant in the Child's life until he filed a Complaint for Custody on August 16, 2019.

Father has never sent any type of card or gift to the Child for his birthday or holidays. Father has made no effort to provide the Child with love, protection, guidance, or support. This Court finds that Mother placed no obstacles in Father's path which would have impeded his ability to see the Child and exercise his custodial rights. In fact, Mother encouraged Father to have a relationship with the Child and transported the Child to see Father when he was a baby. When Mother vacated their shared home, she moved in with her parents, and Father was aware of the location of the home. Father had a responsibility to utilize all available resources to preserve the parental relationship with the Child. Father did not use the Court system to establish and enforce his custodial rights. Father did not even reach out to Mother to attempt to make arrangements to see the Child. Father has performed absolutely no parental duties for most of the Child's life. Simply put, Father is a stranger to the Child.

This Court is satisfied that Mother and Mother's Fiancé have proven by clear and convincing evidence that Father has failed to perform parental duties for at least 6 months prior to the filing of the Petition for Involuntary Termination of Parental Rights pursuant to 23 Pa.C.S. §2511(a). Additionally, Father has evidenced a settled purpose of relinquishing parental claim to the Child, which is supported by Father's failure to attend the hearing on the Petition for Involuntary Termination of his Parental Rights, despite being properly served with notice.

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 next 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 Father. Termination of Father’s rights would not destroy an existing necessary and beneficial relationship as

the Child has not seen Father since he was approximately 1 year old. Due to the young age of the Child when he last had contact with Father, and the length of time that Mother's Fiance has been involved in his life, the Child is unaware that his biological father is not the same person as Mother's Fiance, whom he refers to as "Dad." The Child is clearly bonded to Mother's Fiancé, who has been a prominent figure in his life since he was approximately 9 months old. It is evident to the Court that Mother's Fiancé loves and cares for Child and treats him as his own. Simply put, Father had the opportunity to establish and maintain a bond with the Child since his separation from Mother and he failed to take advantage of it. Mother's Fiancé 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 since before the Child's first birthday.

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

Conclusions of Law

1. The Court finds that KW and WM have established by clear and convincing evidence that JS, Jr.'s parental rights to CDS should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that KW and WM have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of CDS will best be served by termination of JS, Jr.'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 ADOPTION OF: :
 :
CDS, :
 :
 minor child :
 :

DECREE

AND NOW, this **3rd** day of **February, 2020**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JS, Jr., held on January 27, 2020, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JS, Jr. be, and hereby are, terminated as to CDS;
- (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 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