

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

IN RE: : **NO. 6689**
: :
JDS, II, : :
: :
minor child, : :

OPINION AND ORDER

AND NOW, this 1st day of **June, 2020**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, BB, and her husband, BB, on February 4, 2020. Said petition is in regard to the rights of BB's child, JDS, II, born August 16, 2007. Mother and her husband seek to terminate the parental rights of the child's biological father, JDS, as a prerequisite to having the child adopted by Mother's husband. The Petition for Involuntary Termination of Parental Rights was served upon JDS by certified mail. A pre-trial conference on the Petition was held on March 13, 2020. Father did not appear at the pre-trial conference. An Order was entered by this Court on March 13, 2020, advising JDS that if he wished to participate in the hearing on the termination of his parental rights and have counsel appointed for him, he must advise the Court in writing by April 13, 2020. JDS had no contact with the Court concerning his participation in the hearing or the appointment of counsel on his behalf. A hearing on the Petition to Involuntarily Terminate Father's Parental Rights was held on May 29, 2020. JDS did not appear, despite the Court finding that he had proper notice of the hearing. BB and BB appeared and represented themselves in this matter.

Finding of Facts

1. JDS, II ("Child") was born August 16, 2007. The Child currently resides with his Mother, BB ("Mother") and Mother's Husband, BB ("Husband") at 132 East Mechanic Street, Muncy, Pennsylvania. Mother and Husband have been married since September 13, 2014.

2. The Child's biological Father is JDS ("Father"). Father resides at 835 Citrus Avenue, Apt. 94, Azusa, California.

3. At the time of the Child's birth, Mother and Father were unmarried, but in a relationship. Mother and Father married on April 3, 2008. At the time of their marriage, Mother and Father resided together in Arkansas.

4. Mother and Father separated on June 1, 2012.

5. For a short period after their separation, Mother resided in Arkansas, but then relocated to Oklahoma, where she had grown up.

6. Prior to Mother's move to Oklahoma, Father had contact with the Child on one occasion through mutual friends with whom Father was staying.

7. Mother learned that during the weekend that Father spent with the Child at a mutual friend's home, Father was engaged in activities that made Mother uncomfortable.

8. After that weekend, Mother reached out to Father to discuss the issue with him. He advised that he had no recollection of the weekend and hung up on her.

9. When Mother relocated to Oklahoma, Father knew how to reach Mother. Mother remained in contact with she and Father's mutual friends in Arkansas. Those friends visited Mother in Oklahoma.

10. The Divorce between Mother and Father was finalized in July, 2013. Mother took a copy of the Divorce Decree and left it at Father's mother's home and provided her with an address and phone number where Mother could be reached in Lycoming County, Pennsylvania. Father was incarcerated at the time.
11. Mother still has the same phone number that she had left with Father's mother.
12. Mother relocated to Lycoming County in July, 2013.
13. In December, 2013, once he had been released from incarceration, Father contacted Mother through social media.
14. Mother had plans at that time to return home for the holidays and made arrangements to meet with Father and Father's mother at Mother's mother's home during the holidays.
15. At the date and time set to meet, Father and his mother failed to appear.
16. Mother attempted to contact Father by phone at that time and there was no answer.
17. On one occasion in 2015 and one occasion in 2017, Father contacted Mother on social media in the early morning hours indicating that he wished to talk to "his boy". Mother responded to these social media contacts and made arrangements for Father to call the child the next day. On both occasions, Father failed to contact the child.
18. In 2019, Father's new wife emailed Mother indicating that Father wished to speak with his son. Mother requested that she be provided Father's phone number and that she would then give it to the Child (who was now 12 years old) so that he could call. The number was provided, but the Child did not wish to call Father.

19. Mother contacted Father on the date of the filing of the Petition to Involuntarily Terminate Father's Parental Rights on February 4, 2020, to attempt to obtain his address to serve him with notice of the hearing. Mother left a message for Father.

20. Father returned Mother's call on February 8, 2020. Father threatened Mother and told her she should not have any contact with his Wife.

21. During that call on February 8, 2020, Mother did advise Father that she was seeking his address to serve him with the Petition. His response was "good luck finding me".

22. During the phone conversation with Father, Mother inquired as to whether or not Father wished to speak with the child, which he did during that phone conversation.

23. Since February 8, 2020, Mother has attempted to reach out to Father and is currently blocked from contacting him. Father has also blocked Mother from contacting him at various times between 2012 and 2020.

24. At no time has Father provided any child support for the child, despite the Divorce Decree providing for a child support provision.

25. Since June 1, 2012, when Mother and Father separated, Father has not provided any gifts or other necessities for the Child.

26. No member of Father's family has attempted to reach out to the Child since Mother and Father's separation on June 1, 2012.

27. The Child calls Husband "Blue", but introduces him as his father.

28. The Child has requested to use the last name "B" on his football jerseys for the past two football seasons.

29. The Child has absolutely no relationship with his biological Father and, prior to the filing of the petition, had not spoken to him since he was four years of age.

30. When questioned as to his relationship with the Child, Husband stated that he is “his boy and that’s all there is to it”.

Discussion

Mother and Husband 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, Father 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 Petition to Involuntary Terminate his parental rights, Father has evidenced both a settled purpose of relinquishing parental claim to the Child and has failed to perform his parental duties for a period well in excess of six (6) months. Father's last in-person contact with the Child was approximately 8 years ago when the Child was four years old. Clearly when Mother and Father's relationship ended in June, 2012, so did Father's relationship with Child. Father has not financially supported the Child, despite a child support provision in the Divorce Decree.

A parent has an affirmative duty to be part of a child's life; Father has clearly not met this affirmative duty. Father has not even shown a passive interest in the Child for most of the Child's life. Father failed in a meaningful way to reach out to Mother to

inquire about the Child despite knowing how to contact her. In fact, Father has blocked Mother from reaching him. Father failed to play any role in the Child's life for the past eight years. The Court finds Mother placed no obstacles in Father's path which would prevent him from exercising his parental rights, privileges, and obligations with regard to Child.

This Court further finds that Mother and her Husband have clearly established that Father 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, Father failed to appear for the pre-trial conference or 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)). A parent’s own feelings of love and affection for a child do not prevent termination of parental rights. In re: L.M., 923 A.2d 505, 512 (Pa. Super. 2007).

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 Father. The Child introduces Mother’s Husband as “Dad.” Father has not seen the Child since he was four years old. Termination of Father’s rights would not destroy an existing necessary and beneficial relationship as there currently exists no relationship between Father and the Child, and there has been no relationship between the two since the Child was approximately four years old. Child is bonded to Mother’s Husband, who has been in Child’s life since he was five years old, and who is the only father-figure the Child would know. It is evident to the Court that Mother’s Husband loves and cares for Child and treats him as his own. Mother’s Husband has stepped in and provided the love and support Child needs and has assumed the parental responsibilities that Father has utterly failed to perform and has evidenced a settled purpose of relinquishing.

The Court is satisfied that both Mother and her Husband understand the potential consequences of allowing Husband to adopt Child, and that termination Father’s

parental rights and allowing the adoption by Mother's Husband to proceed is in the best interest of the Child.

Conclusions of Law

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

2. The Court finds that BB and BB have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of JDS, II, will best be served by termination of JDS'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 1st day of **June, 2020**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JDS, held on May 29, 2020, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JDS 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 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 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