

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

IN RE: : **NO. 6698**
:
LRD, :
:
minor child :

OPINION AND ORDER

AND NOW, this 5th day of **October, 2020**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, KW, and her husband, RW, on May 22, 2020. Said petition is with regard to the rights to KW' child, LRD, born November 24, 2011. Mother and her husband seek to terminate the parental rights of the child's biological father, PD, as a prerequisite to having the child adopted by Mother's husband. The Petition for Involuntary Termination of Parental Rights and hearing notice were served upon PD on June 28, 2020, as evidenced by an Affidavit of Personal Service filed on June 30, 2020. A pre-trial conference on the Petition was held on July 17, 2020, at which time Father appeared personally. At the time of the pre-trial conference, Father indicated to the Court that he intended to contest the termination of his parental rights and he planned to retain Melody Protasio, Esquire, to represent him in this matter. The Court advised Father that counsel would be appointed for him if he desired and he declined. By Order dated July 17, 2020, this Court scheduled the hearing on the Petition for Involuntary Termination of Parental Rights for September 30, 2020. Father was advised that if he wished to have counsel appointed on his behalf, he must advise the Court in writing by August 7, 2020, and that the matter would not be continued to allow Father to obtain counsel. Also by Order dated July 17, 2020, Jennifer Ayers, Esquire, was appointed as counsel for the Child.

Father did not contact the Court at any time between the pre-trial conference and the hearing on the Petition for Involuntary Termination of Parental Rights. The Court confirmed with Melody Protasio, Esquire, that Father did not retain her to represent him. The hearing took place as scheduled on September 30, 2020. Mother and her husband attended and were represented by Taylor Mullholand, Esquire. Jennifer Ayers, Esquire, was present on behalf of the Child. Father, though properly served, failed to appear.

Finding of Facts

1. LRD (“Child”) was born on November 24, 2011. The Child currently resides with her mother, KW (“Mother”) and Mother’s husband, RW (“Husband”) at 27 Ross Street, Owego, New York. Mother and Husband have been married since September 9, 2018. Husband has lived with Mother and Child since 2013.

2. The Child’s biological father is PD (“Father”). Father’s last known address is 142 Mohawk Drive, Hughesville, Pennsylvania.

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

4. Mother obtained a final Protection from Abuse Order against Father by agreement without admission on September 16, 2013, at Lycoming County Docket #13-21,211. The Child was not a protected party under the Order and Father was able to exercise periods of custody through a third party intermediary.

5. The Protection from Abuse Order was withdrawn by Mother on August 6, 2014.

6. Father filed a Complaint for Custody on March 12, 2014, at Lycoming County Docket #14-20,323.
7. The most recent custody Order is dated September 6, 2017, following an agreement reached at a follow-up custody conference. Mother testified that Father was in and out of rehab at that time and the intent was to work up to an every-other weekend schedule.
8. From September 6, 2017, until October of 2019, Father saw the Child but did not always exercise periods of custody every other weekend that he was granted in the custody agreement.
9. After the Child was returned from a visit with Father in October of 2019, Father abruptly stopped exercising periods of custody.
10. Father's last contact with the Child was when he called her on November 24, 2019, for her birthday.
11. Father has not sent any cards or gifts to the Child or provided any financial support for the Child since his last contact with her.
12. The Child was diagnosed with autism and has an IEP through her school. Father has not attended any meetings or medical appointments related to her diagnosis and education.
13. Father is aware of Mother's phone number and address.
14. The Child refers to Father as "Patrick," and Mother's Husband as "Dad" or "Daddy."
15. The Child knows and would recognize Father, but does not ask to see or speak to him.

16. Mother's Husband has a father-daughter relationship with the Child.

Husband loves and supports the Child and considers her his daughter.

17. Mother's Husband desires to proceed with the adoption of the Child.

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 filing of the Petition for Involuntary Terminate of 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 in excess of six (6) months. Father's last in-person contact with the Child was nearly one year ago in October of 2019. Father called the Child on her birthday in November of 2019, but has not had contact with her since then. Mother offered to bring the Child to visit with Father on Christmas Eve of 2019, but received a text from Father that morning indicating he was sick and it would be best for the Child not to come over. (Ex. 1).

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 much of the Child's life. The Child was diagnosed with global development delays, developmental coordination disorder, and sensory processing disorder in February of

2016. (Ex. 7). Child was diagnosed with autism in 2018. (Ex. 8). The Child has had an IEP through her school district since 2014 which requires parental involvement. (Ex. 9). Father has never participated in any IEP meetings or any related medical appointments or evaluations. The Court finds Mother placed no obstacles in Father's path that would prevent him from exercising his parental rights, privileges, and obligations with regard to Child. In fact, Mother testified that she regularly informs Father of school conferences, open houses, and medical appointments. Mother has "tagged" Father in pictures of the Child that she posts on Facebook. Mother has invited Father to attend the father/daughter dance at the Child's school. Last year, Father agreed to take the Child to the dance as Mother's Husband was sick but failed to show up for the occasion. Despite Mother's efforts to keep Father informed and involved, Father has simply neglected his duty to maintain a place of importance in the Child's life.

This Court finds that Mother and her Husband have established by clear and convincing evidence 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 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 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, although the Child has spent time with Father in the past, those visits have been sporadic and she has not seen Father for approximately one year. Mother testified that the Child calls Father by his first name and refers to Mother’s Husband as “Dad.” Mother further testified that the Child does not ask to see or speak to Father. Termination of Father’s rights would not destroy an existing necessary and

beneficial relationship as Father has allowed whatever relationship there may have been at one time to lapse. The Child is very bonded to Mother's Husband, who has been in Child's life since she was approximately two years old. It is evident to the Court that Mother's Husband loves and cares for Child and treats her 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 KW and RW have established by clear and convincing evidence that PD's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that KW and RW have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of LRD will best be served by termination of PD'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. 2020-6698**
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LRD, : :
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DECREE

AND NOW, this 5th day of **October, 2020**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of PD, held on September 30, 2020, it is hereby ORDERED and DECREED:

- (1) That the parental rights of PD 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