

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

IN RE:	:	NO. 6714
	:	
DS; and	:	
KN,	:	
Minor children	:	

OPINION AND ORDER

AND NOW, this 22nd day of **December, 2020**, before the Court is Lycoming County Children & Youth Services' ("Agency") Petitions for Involuntary Termination of Parental Rights of AM, also known as AA (Father of DS) and RN (Father of KN) filed on October 2, 2020 with regard to the above referenced children. A hearing on the Petitions for Involuntary Termination of Parental Rights was held on December 15, 2020. Neither Father was present for the hearing. AA was represented by Timothy Reitz, Esquire and RN was represented by Tricia Shipman, Esquire. Also present were the following: AJ ("Mother") who was represented by Trisha Jasper, Esquire; John Pietrovito, Esquire, Solicitor for the Agency; Angela Lovecchio, Esquire, Guardian *Ad Litem* for the children; and Jeffrey Yates, Esquire, legal counsel for the children. The Court notes that Mother signed a Consent to Adopt on October 13, 2020 with regard to both of the children. Both consents were confirmed on December 15, 2020.

Findings of Facts

DS was born on []. He is the child of AJ, date of birth []. AM, also known as AA, is the alleged biological father of DS, his date of birth unknown. Mother and AM were not married at the time of DS's birth. KN was born on []. He is the child of AJ, date of birth [].

RN, date of birth [], is KN's legal father. RN signed an Acknowledgment of Paternity for KN but now states he is not the biological father and does not wish to be involved in KN's life. Mother and RN were not married at the time of KN's birth. Both children have extensive special needs due to their autism and other mental health diagnoses.

All allegations set forth in the Agency's Petitions are undisputed by all parties and are summarized below:

Since February 2014, DS and KN were in the legal guardianship of CH and DV by Court Order from Oklahoma.¹ At some point thereafter, the four moved to Lycoming County. CH passed away on August 18, 2019 and DV, unable to continue to care for the children, voluntarily placed the children in the Agency's care on August 30, 2019 and has declined to have any involvement since that time. On the same date, Mother, who lives in Oklahoma, contacted the Agency, asked that the children be placed in her custody at which point a referral for ICPC was placed, and Mother began having video calls with the children in the meantime.

A Dependency Hearing was held on September 26, 2019 at which time both children were adjudicated dependent and remained in the legal and physical custody of the Agency. Permanency Review Hearings were held January 7, 2020, April 17, 2020, and August 20, 2020. At first, Mother was found to have minimal compliance and moderate progress. Subsequently, Mother began missing several video calls with the children, failed to follow the Court's instructions to learn about the children's special needs, and had no in-person visits. Due to the children's inability to participate in the video calls with Mother, her video visits were reduced. The ICPC was denied for Mother on August 4, 2020 due to concerns for Mother's ability to care for the children given

¹ CH was listed as DS's father on this order but he was later ruled out by DNA testing.

their special needs. At the time of the August 20, 2020 Permanency Review Hearing, Mother indicated her intent to sign a Consent to Adopt.

RN was found to have no compliance and no progress as he had no contact with the Agency or the children since the time of the children's initial placement. AM was unable to be located or contacted until August 20, 2020 when he sent a message to the Agency through Facebook stating that he is not DS's father and threatened to sue the Agency for harassment, false claims, and defamation. AM also indicated his willingness to take a DNA test but later refused to complete the test or communicate with the Agency. On September 14, 2020, AM sent a text message to an Agency caseworker again denying his paternity and threatening to report the Agency to law enforcement for fraud and intimidation.

At the time of the hearing on the Agency's Petitions for Termination of Parental Rights, the Agency caseworker assigned to this matter testified that there has been no contact between the Agency and RN since September of 2019 and there has been no contact between RN and the children since they were placed in the Agency's custody in August of 2019. RN has never attended any dependency hearings, has performed no parental duties for KN, has paid nothing to support KN, and is actively attempting to remove his name from KN's birth certificate. RN's attorney indicated on his behalf that RN takes no position on the Agency's Petition and has no interest in being involved.

The caseworker also testified that the last contact the Agency had with AM was several months ago when AM sent a threatening message and indicated that he is not DS's father. The caseworker testified that, since DS was adjudicated dependent, AM has performed no parental duties and paid no financial support for DS. AM's attorney indicated on his behalf that AM takes no position on the Agency's Petition.

Finally, the caseworker testified that DS and KN remain in the same resource home, continue to grow and develop together, and are in good health. They are expected to be adopted by their current resource parents.

Discussion

The Agency argues that the basis for termination in this case may be found in 23 Pa.C.S. §2511(a)(1), (2), (3), (5) and (8), 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.
- (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.
- (3) The parent is the presumptive but not the natural father of the child.
- (5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.
- (8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

In order to involuntarily terminate a Father's parental rights, the Agency must prove by clear and convincing evidence one of the above subsections of 23 Pa.C.S. §2511(a).

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) (emphasis added). 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, 872 A.2d 1200 (Pa. 2005) citing **In re: D.J.S.**, 737 A.2d 283, 286 (Pa. Super. 1999). Additionally, grounds for termination under 23 Pa.C.S. 2511(a)(1) may also be proven where a parent fails to perform parental duties for a period in excess of six months prior to the filing of the Petition for Involuntary Termination of Parental Rights. 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).

Both RN and AM have made it unequivocally clear that neither wish to be a part of their children's lives. RN has stated that he is not KN's father and has not been involved in any court proceedings. Similarly, AM has indicated that he is not DS's father stating, "I'm not the kid's dad his mom saying that I am after almost [sic] twelve years does not make me the father" See *Exhibit 33*. Additionally, testimony was presented that neither father has performed any parental duties since the time KN and DS were adjudicated dependent which was over one year prior to the filing of the Agency's Petition. Therefore, the Court hereby finds by clear and convincing evidence that the Agency has fulfilled the requirements of 23 Pa.C.S. §2511(a)(1) in that both RN and AM have evidenced a settled purpose to relinquish parental claim to their respective children *and* failed to perform their parental duties for at least six months prior to the filing of the termination petition.

To satisfy the requirements of Section 2511(a)(2), the Agency must demonstrate that Father, through:

(1) [R]epeated and continued incapacity, abuse, neglect or refusal; (2) has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being; and (3) the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.

In re: Adoption of M.E.P., 825 A.2d 1266, 1272 (Pa. Super. 2003.)

Under Section 2511(a)(2), "[t]he grounds for termination [of parental rights] due to parental incapacity that cannot be remedied are not limited to affirmative misconduct. To the contrary, those grounds may include acts of refusal as well as incapacity to

perform parental duties.” **In re: A.L.D.**, 797 A.2d 326, 337 (Pa. Super. 2002) (citations omitted). “Moreover, an agency is not required to provide services indefinitely if a parent is either unable or unwilling to apply the instruction given.” **Id.** at 340. “Parents are required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities. ... [A] parent’s vow to cooperate, after a long period of uncooperativeness regarding the necessity or availability of services, may properly be rejected as untimely or disingenuous.” **Id.**, quoting **In re J.W.**, 578 A.2d 952, 959 (Pa. Super. 1990). “When a child is in foster care, this affirmative duty requires the parent to work towards the return of the child by cooperating with the Agency to obtain rehabilitative services necessary for them to be capable of performing their parental duties and responsibilities.” **In re: G.P.-R.**, 851 A.2d 967, 977 (Pa. Super. 2004).

Since the children were placed into the Agency’s custody, both RN and AM have not only failed but have refused to perform any parental duties as its relates to KN and DS. These refusals have left the children without parental care, control or subsistence necessary for their physical and mental well-being for at least over a year. Clearly, neither father intends to remedy the incapacity. Therefore, the Court finds by clear and convincing evidence that the Agency has fulfilled the requirements of 23 Pa.C.S. §2511(a)(2).

Pursuant to 23 Pa.C.S. § 2511(a)(3), the rights of a father may be terminated where he is the presumptive but not the natural father of the child. While RN signed an Acknowledgement of Paternity regarding KN and is listed as KN’s father on his birth certificate, he now claims that he is not KN’S biological father and has no interest in being involved in KN’s life. While Mother believes that AM is DS’s biological father, AM has never claimed to be his father and vehemently denies such. Despite the Agency’s

offers, neither father has taken a DNA test to determine whether or not he is the biological father. Therefore, the Court finds that the Agency has fulfilled the requirements of 23 Pa.C.S. §2511(a)(3).

“Termination of parental rights under Pa.C.S. § 2511(a)(5) requires that: (1) the child has been removed from parental care for at least six months; (2) the conditions which led to removal and placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child.” **In re: K.J.**, 936 A.2d 1128, 1134 (Pa. Super. 2007).

Similarly, to terminate parental rights pursuant to 23 Pa.C.S. § 2511(a)(8), the following factors must be demonstrated: “(1) [t]he child has been removed from parental care for 12 months or more from the date of removal; (2) the conditions which led to the removal or placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child.” **In re: Adoption of M.E.P.**, 825 A.2d 1266, 1275-76 (Pa. Super. 2003). “Section 2511(a)(8) sets a 12-month time frame for a parent to remedy the conditions that led to the children’s removal by the court.” **In re: A.R.**, 837 A.2d 560, 564 (Pa. Super. 2003). After the 12-month period has been established, the Court must next determine whether the conditions necessitating placement persist, despite the reasonable good faith efforts that the agency supplied over a realistic time period. **Id.** In terminating parental rights under Section 2511(a)(8), the trial court is not required to evaluate a parent’s current “willingness or ability to remedy the conditions that initially caused placement”. **In re: Adoption of T.B.B.**, 835 A.2d at 396 (Pa. Super. 2003); **In re: Adoption of M.E.P.**, 825 A.2d at 1276.

The children in this case were placed into the Agency custody on September 26, 2019 – approximately fifteen months ago. At the time the children were adjudicated dependent, neither father wished to be in his child’s life which has remained unchanged. The children’s Guardian *Ad Litem* as well as their legal counsel agree that termination is in the best interest of the children. The Court agrees and finds that the Agency has proven by clear and convincing evidence that grounds for termination of both father’s parental rights exist under both Sections 2511(a)(5) and (8).

As the Court has found that statutory grounds for termination have been met under all six subsections of 23 Pa. C.S. §2511(a) contained in the Petitions to Involuntarily Terminate Parental Rights, the Court must now 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 (Pa. Super. 2002).

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).

The children have not seen or heard from RN or AM in at least fifteen months. Neither father even wants to have a bond with his child. There was no evidence presented that a bond ever existed between the children and their respective father and therefore, there is not bond that risks being destroyed by the termination of their father's parental rights. The Court is satisfied that termination of RN's and AM's parental rights would not destroy an existing bond or cause any trauma to the children and that permanency in the form of adoption by those who have met their needs since September of 2019 is in the best interest of the children.

Conclusions of Law

1. The Court finds that the Agency has established by clear and convincing evidence that RN, by conduct continuing for a period of at least six months immediately preceding the filing of the petition has evidenced a settled purpose to relinquish parental claim to KN and has failed to perform parental duties pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that the Agency has established by clear and convincing evidence that AM, as known as AA, by conduct continuing for a period of at least six months immediately preceding the filing of the petition has evidenced a settled purpose to relinquish parental claim to DS and has failed to perform parental duties pursuant to 23 Pa.C.S. §2511(a)(1).
3. The Court finds that the Agency has established by clear and convincing evidence that RN has exhibited repeated and continued incapacity, abuse, neglect or refusal which has caused KN 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 him pursuant to 23 Pa.C.S. §2511(a)(2).
4. The Court finds that the Agency has established by clear and convincing evidence that AM, also known as AA, has exhibited repeated and continued incapacity, abuse, neglect or refusal which has caused DS 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 him pursuant to 23 Pa.C.S. §2511(a)(2).
5. The Court finds that the Agency has established by clear and convincing evidence that RN is the presumptive but not the natural father of KN pursuant to 23 Pa.C.S. §2511(a)(3).
6. The Court finds that the Agency has established by clear and convincing evidence that AM, also known as AA, is the presumptive but not the natural father of DS pursuant to 23 Pa.C.S. §2511(a)(3).

7. The Court finds that, the Agency has established by clear and convincing evidence that KN has been removed from RN's care for a period of at least six months, that the conditions which led to the removal or placement of the child continue to exist, that the conditions which led to the removal or placement of the child are not likely to be remedied within a reasonable period of time, and that termination of RN's parental rights would best serve the needs and welfare of the child pursuant to 23 Pa.C.S. §2511(a)(5).
8. The Court finds that, the Agency has established by clear and convincing evidence that DS has been removed from AM's, also known as AA's, care for a period of at least six months, that the conditions which led to the removal or placement of the child continue to exist, that the conditions which led to the removal or placement of the child are not likely to be remedied within a reasonable period of time, and that termination of AM's, also known as AA's, parental rights would best serve the needs and welfare of the child pursuant to 23 Pa.C.S. §2511(a)(5).
9. The Court finds that, the Agency has established by clear and convincing evidence that KN has been removed from RN's care for a period of twelve months or more, that the conditions which led to the removal or placement of the child continue to exist, and that termination of RN's parental rights would best serve the needs and welfare of the child pursuant to 23 Pa.C.S. §2511(a)(8).
10. The Court finds that, the Agency has established by clear and convincing evidence that DS has been removed from AM's, also known as AA's, care for a period of twelve months or more, that the conditions which led to the removal or placement of the child continue to exist, and that termination of AM's, also known

as AA's, parental rights would best serve the needs and welfare of the child pursuant to 23 Pa.C.S. §2511(a)(8).

11. The Court finds that the Agency has established by clear and convincing evidence that no bond exists between RN and KN and that the developmental, physical and emotional needs and welfare of the child will be best served by the termination of his parental rights pursuant to 23 Pa.C.S. §2511(b).
12. The Court finds that the Agency has established by clear and convincing evidence that no bond exists between AM, also known as AA, and DS and that the developmental, physical and emotional needs and welfare of the child will be best served by the termination of his parental rights pursuant to 23 Pa.C.S. §2511(b).

Accordingly, the Court will enter the attached Decrees.

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: John Pietrovito, Esq.
Trisha Jasper, Esq.
Tricia Shipman, Esq.
Timothy Reitz, Esq.
Angela Lovecchio, Esq.
Jeffrey Yates, Esq.
CASA
Lycoming County Children and Youth Agency
Gary Weber, Esq.

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

IN RE: : **NO. 6714**
:
KN, :
:
Minor child :

DECREE

AND NOW, this 22nd day of **December, 2020**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of RN, held on December 15, 2020, it is hereby ORDERED and DECREED:

- (1) That the parental rights of RN be, and hereby are, terminated as to KN, above-named;
- (2) That the welfare of KN will be promoted by adoption; that all requirements of the Adoption Act have been met; that KN may be the subject of adoption proceedings without any further notice to the natural father.

NOTICE TO NATURAL PARENT

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,

Ryan M. Tira, Judge

RMT/ads

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ORPHANS' COURT DIVISION**

IN RE: : **NO. 6714**
: :
DS :
: **Minor child** : :

DECREE

AND NOW, this **22nd** day of **December, 2020**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of AM, also known as AA, held on December 15, 2020, it is hereby ORDERED and DECREED:

- (1) That the parental rights of AM, also known as AA be, and hereby are, terminated as to DS, above-named;
- (2) That the welfare of DS will be promoted by adoption; that all requirements of the Adoption Act have been met; that DS may be the subject of adoption proceedings without any further notice to the natural father.

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