

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

IN RE: : **NO. 2020-6721**
:
BEC, :
:
minor child :

OPINION AND ORDER

AND NOW, this 2nd day of **March, 2021**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, EVE, and her husband, DPE, on November 12, 2020. Said petition is with regard to the parental rights of EVE's child, BEC, born October 25, 2013. Mother and her husband seek to terminate the parental rights of the child's biological father, JLC, as a prerequisite to having the child adopted by Mother's husband. The Petition for Involuntary Termination of Parental Rights and pre-trial conference notice were served upon JLC via certified mail on November 27, 2020, as evidenced by a Proof of Service with return receipt signed by JLC attached thereto. A pre-trial conference on the Petition was held on December 23, 2020, at which time Father failed to appear. Following the pre-trial conference, an Order was entered scheduling a hearing on the Petition for Involuntary Termination of Parental Rights for March 1, 2021. The Order indicated that if JLC wished to participate in the hearing and have counsel appointed for him, he must notify this Court in writing by January 18, 2021. The Court did not receive any communication from JLC and the hearing on the Petition for Involuntary Termination of Parental Rights was held as scheduled on March 1, 2021. EVE and DPE attended personally and were represented by Mark Taylor, Esquire. JLC, although properly served both personally on January 19, 2021, and by regular mail, failed to appear.

Finding of Facts

1. BEC ("Child") was born on October 25, 2013. The Child currently resides with her mother, EVE ("Mother") and Mother's husband, DPE ("Husband") at 243 Eck Lane, South Williamsport, Pennsylvania. Mother and Husband have been married since April 30, 2016. Husband has lived with Mother and Child since March of 2015.
2. The Child's biological father is JLC ("Father"). Father's last known address is 407 Charlotte Avenue, South Williamsport, Pennsylvania.
3. The Child is not the subject of a current custody order and neither Mother nor Father has ever petitioned the Court to establish or enforce custodial rights.
4. When Mother and her Husband were first married, Father's contact with the Child was sporadic. Father's contact with the Child has decreased over time.
5. Father's last contact with the Child was the first week of June in 2018, although there was an accidental meeting in December of 2019 when the Child was spending time with paternal grandmother and Father happened to show up.
6. Father did not provide the Child with any Christmas presents or cards in 2019 or 2020. Father sent a card with paternal grandmother to the Child's birthday party in 2019 but did not give the Child any cards or gifts for her birthday in 2020.
7. Father is aware of Mother's phone number as it has not changed since they were a couple.
8. The Child knows and would recognize Father, but only asks if she is going to see him on birthdays and around the holidays.
9. Mother's Husband has a father-daughter relationship with the Child. Husband loves and supports the Child and considers her his daughter.
10. The Child refers to Mother's Husband as "Dad."

11. Mother and her Husband have three children together. Mother's Husband treats the Child the same as his biological children.

12. 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 intentional in-person contact with the Child was in June of 2018, more than two years prior to the filing of the Petition for Involuntary Termination of Parental Rights. Father did happen to briefly see the Child in December of 2019 while she was visiting his mother. However, after that meeting, Father did not ask Mother for any additional time with the Child.

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 the last several years. Father sent a card with his mother to the Child's birthday party in 2019, but did not acknowledge her birthday in 2020. Father did buy any gifts or send

any cards to the Child for Christmas in either 2019 or 2020. Mother and her Husband provide for all of the Child's financial, social, medical, and educational needs.

Mother testified that she regularly speaks with Father's mother and his sister, and that Father knows her cell phone number because she has not changed it since they were a couple. Mother is active on Facebook and other social media platforms but Father has not reached out to her in any manner to request information about the Child's health and education. Father has never petitioned the Court to establish or enforce any custodial rights to the Child. 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. Simply put, Father has 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 over two years, except for one accidental meeting in December of 2019. Mother testified that the Child only asks about Father occasionally and such inquiries are without any emotion. The Child refers to Mother’s Husband as “Dad.” 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 eight weeks old, and has lived with the Child since March of 2015. Mother's Husband and the Child enjoy participating in outdoor activities together, such as fishing and hiking. Mother and Husband have three children together, and they have been functioning as a family unit for many years. 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 EVE and DPE have established by clear and convincing evidence that JLC's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that EVE and DPE have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of BEC will best be served by termination of JLC's parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Joy Reynolds McCoy, Judge

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IN RE: : **NO. 2020-6721**
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DECREE

AND NOW, this 2nd day of **March, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JLC, held on March 1, 2021, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JLC 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 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,

Joy Reynolds McCoy, Judge