

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

IN RE: ADOPTION OF	:	NO. 2021-6735
	:	
CL,	:	
	:	
Minor child	:	

OPINION AND ORDER

AND NOW, this 23rd day of **June, 2021**, before the Court is RL and ChL's ("Petitioners") Petition for Involuntary Termination of Parental Rights of LC ("Father") filed on February 8, 2021, with regard to CL ("Child"). A pre-hearing conference was held on March 5, 2021, at which time Father did not appear, and may not have been properly served with notice. A hearing on the Petition was scheduled for May 24, 2021. Because Father was unable to be located despite numerous attempts to serve him, Petitioners' Counsel requested that the hearing be continued and preemptively served Father by publication, which the Court ratified by Order dated May 24, 2021. The Petition for Involuntary Termination of Parental Rights was published in the Williamsport Sun-Gazette on May 21, 2021, and in the Lycoming Reporter on May 28, 2021. The hearing on the Petition for Involuntary Termination of Parental Rights took place on June 4, 2021. At the time of the hearing, Petitioners were present and represented by Melody Protasio, Esquire, and Father, despite proper service, failed to appear. CC ("Mother") signed a Consent to Adoption on October 22, 2020, and did not appear at the termination hearing.

Findings of Facts

The Child was born on February 12, 2010. At the time of his birth, Mother was living with Petitioners. When Mother moved out of Petitioners' home, the Child would

occasionally spend overnights with Mother but primarily remained in Petitioners' home, where they were his primary caretakers. Father filed a Complaint for Custody on April 8, 2014, and after a custody conference, the parties agreed that Mother would have primary physical custody and Father would have partial physical custody. Father exercised approximately six visits with the Child under the current custody Order, the last of which occurred on Labor Day, 2014. Though he was aware of how to contact Petitioners by telephone and had previously been to their house, Father has not reached out to enquire about the Child's health or well-being, nor has he participated in medical appointments or educational decisions. Father has not provided any cards or gifts to the Child for his birthday or holidays.

The Petitioners are the Grandmother and Step-Grandfather of the Child. The Child has resided full-time with Petitioners since 2015. They have a loving relationship with the Child and he is closely bonded to them. The Petitioners have provided the Child with love and stability and desire to continue to do so through adoption.

Discussion

Petitioners 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.

In order to involuntarily terminate parental rights, Petitioners must prove the above subsection by clear and convincing evidence.

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).

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).

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 nearly seven years. Father has not exercised the periods of physical custody he was granted pursuant to a Court Order since September of 2014. Since the entry of the current custody Order on July 2, 2014, Father has never utilized the court system to enforce or expand his periods of custody. Since his last in-person contact, Father has not sent the child any gifts or cards for holidays or birthdays. Father has not attended any medical appointments or school conferences for the Child. The Petitioners have provided for all of the Child's financial, social, medical, and educational needs.

The Petitioners testified that Father has been to their home and is aware of their phone number, as evidenced by phone calls and texts as recently as May 21, 2021. (Ex. P1). This Court finds that the Petitioners have in no way prevented Father's access to the Child. Father simply has made no effort to spend time with the child and has no interest in maintaining a place of importance in the Child's life. The Court hereby finds by clear and convincing evidence that the Petitioners have fulfilled the requirements of 23 Pa.C.S. §2511(a)(1) in that Father has evidenced a settled purpose to relinquish his parental claim to the Child *and* failed to perform his parental duties for a period well in excess of six months prior to the filing of the termination petition.

As the Court has found that statutory grounds for termination have been met under 23 Pa. C.S. §2511(a)(1), 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).

Given the age of the Child at the time of their last in-person contact, and the length of time which has passed, this Court concludes that there is no bond between Father and the Child. The Petitioner testified that, although the Child would likely recognize Father and knows who he is, he is scared of Father and does not wish to have a relationship with him. The Court is satisfied that termination of Father’s parental rights would not destroy an existing bond or

cause any trauma to the Child and that permanency in the form of adoption by those who have met his needs for nearly his whole life is in the best interest of the Child.

Conclusions of Law

1. The Court finds that the Petitioners have established by clear and convincing evidence that LC, 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 the Child and has failed to perform parental duties pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that the Petitioners have established by clear and convincing evidence that no bond exists between LC and the Child 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 Decree.

By the Court,

Joy Reynolds McCoy, Judge

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IN RE: ADOPTION OF : **NO. 2021-6735**
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CL, :
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DECREE

AND NOW, this 23rd day of **June, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of LC, held on June 4, 2021, it is hereby ORDERED and DECREED:

- (1) That the parental rights of LC 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 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,

Joy Reynolds McCoy, Judge