

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

IN RE: : **NO. 2021-6730**
:
MLS, :
:
minor child :

OPINION AND ORDER

AND NOW, this 15th day of **July, 2021**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, LB, and her paramour, NK, on January 15, 2021. Said petition is with regard to the rights to LB's child, MLS, born June 1, 2017. Mother and her paramour seek to terminate the parental rights of the child's biological father, CS, as a prerequisite to having the child adopted by Mother's paramour. A prehearing conference was scheduled for March 5, 2021, but continued until May 14, 2021, to properly serve CS. CS was served with notice of the Petition for Involuntary Termination of Parental Rights and pre-hearing conference via publication in The Leader on March 20, 2021, and the Arkansas Democrat Gazette on March 21, 2021. At the time of the pre-trial conference, Father did not appear. By Order docketed May 17, 2021, a hearing on the Petition for Involuntary Termination of Parental Rights was scheduled for July 13, 2021, and Father was advised that if he wished to have counsel appointed on his behalf, he must advise the Court in writing by June 13, 2021. The Order was sent to CS's last known address and was not returned as undeliverable. This Court is satisfied that Father received proper notice of the time, date, and location of the hearing.

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 hearing

took place as scheduled on July 13, 2021. Mother and her paramour attended and were represented by Jason Lepley, Esquire. Father, though properly served, failed to appear.

Finding of Facts

1. MLS (“Child”) was born on June 1, 2017. The Child currently resides with her mother, LB (“Mother”) and Mother’s paramour, NK (“Mother’s Paramour”) at 213 Degreeen Street, Danville, Pennsylvania. The Child has resided with Mother since birth. Mother’s Paramour has lived with Mother and Child since 2019.

2. The Child’s biological father is CS (“Father”). Father’s last known address is 122 Spring Valley Road, Cabo, Arkansas.

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

4. Mother filed a Complaint for Custody on January 9, 2020, at Lycoming County Docket #20-20026. In her Complaint, Mother alleged Father failed to take care of the Child for 2 years and had issues with drugs and alcohol.

5. The current custody Order is docketed May 6, 2020, and grants Mother and Father shared legal custody of the Child.

6. Under the current custody Order, Father has physical custody of the Child on the first and third weekends of the month from 7:30 p.m. on Friday until 7:30 p.m. on Monday.

7. Father exercised his periods of physical custody for approximately five weekends before relocating to Arkansas in the summer of 2020.

8. Father did not provide Mother with notice of his move to Arkansas; instead, Mother learned of his relocation through Father’s aunt.

9. Father's last contact with the Child was approximately one year ago, in the summer of 2020.

10. Father has not sent any cards or gifts to the Child since his last contact with her. Father did request Mother's address and indicated he would be sending Christmas presents for the Child, but they never arrived.

11. Father is aware of Mother's phone number and address.

12. The Child refers to Mother's Paramour as "Daddy."

13. The Child has no memory of Father, and would likely not recognize him if she saw him.

14. Mother's Paramour has a father-daughter relationship with the Child. He loves and supports the Child and considers her his daughter.

15. Mother's Paramour 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 approximately one-year ago in the summer of 2020. Without any warning or explanation, Father relocated to Arkansas at that time and has had no contact, either in-person or by phone, with the Child since then.

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. Mother testified that, prior to the entry of the custody Order, Father only saw the Child sporadically. After the entry of the custody Order, Father only exercised his periods of weekend custody five times before he left the state. Father never utilized the court system to modify the custody Order to allow him to continue to exercise periods of physical custody in Arkansas. 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 provided Father with her address both via telephone and text when he requested it for the purpose of sending the Child gifts for Christmas. Mother's cell phone number has been the same for years. Father has simply neglected his duty to maintain a place of importance in the Child's life.

This Court finds that Mother and Mother's Paramour 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 likely would not recognize Father and refers to Mother's Paramour as "Daddy." 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 Paramour, who has resided with Mother and the Child for approximately half of the Child's life. It is evident to the Court that Mother's Paramour loves and cares for Child and treats her as his own. Mother's Paramour has stepped in and provided the love and support the 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 Mother's Paramour understand the potential consequences of allowing Mother's Paramour to adopt Child, and that termination Father's parental rights and allowing the adoption by Mother's Paramour to proceed is in the best interest of the Child.

Conclusions of Law

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

2. The Court finds that LB and NK have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of MLS will best be served by termination of CS'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 15th day of **July, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of CS, held on July 13, 2021, it is hereby ORDERED and DECREED:

- (1) That the parental rights of CS 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