

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

IN RE: : **NO. 2021-6740**
: :
ADOPTION OF : :
OS, : :
: :
minor child : :

OPINION AND ORDER

AND NOW, this 10th day of **May, 2021**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by EL and LL on March 10, 2021. Said petition is with regard to the paternal rights of OS, born September 21, 2016. EL and LL seek to terminate the parental rights of the child's biological mother, MS, and father, MG, as a prerequisite to adopting the child. On March 11, 2021, an Order was entered appointing Dance Drier, Esquire, as counsel for MS. On March 23, 2021, an Order was entered advising MG that he must notify the Court no later than April 10, 2021, if he wished to have counsel appointed on his behalf to represent him at the hearing on the Petition for Involuntary Termination of Parental Rights. Having been notified that he wished to participate in the hearing, an Order was entered on April 14, 2021, appointing John Gummo, as counsel for MG.

A hearing on the Petition to Involuntarily Terminate MS and MG's parental rights was held on May 3, 2021. EL and LL appeared with their counsel, Mary Kilgus, Esquire. MS appeared with her counsel, Dance Drier, Esquire. MG was present and represented by John Gummo, Esquire. Angela Lovecchio, Esquire, counsel for OS, was also present at the hearing.

At the beginning of the hearing, MG, through his counsel, expressed a desire to voluntarily relinquish his parental rights. MG agreed to sign a Consent to Adopt, to be

prepared by counsel for EL and LL. The Court did hear brief testimony from LL, who indicated that OS had been in her custody since July of 2017 and she had no contact with MG whatsoever prior to the hearing. MS also briefly testified that she notified MG that she was pregnant and when she was being induced, but had no contact with MG following OS's birth. All parties stipulated that, in the event MG fails to sign a Consent to Adopt or revokes a signed Consent to Adopt within the 30 day statutory window, the Court would make a determination on the Petition for Involuntary Termination of Parental Rights regarding MG based upon the testimony given at the hearing.

As MG indicated he would sign Consent to Adopt and, in the alternative, stipulated to the Court making a determination based upon the limited testimony given at the hearing, this Opinion and Order shall focus solely on MS and whether EL and LL have established by clear and convincing evidence that her parental rights should be terminated.

Finding of Facts

1. OS ("Child") was born on September 21, 2016. The Child currently resides with his maternal great Aunt and Uncle, LL and EL (collectively, "L's") at 12025 Rte. 220 Hwy, Hughesville, Pennsylvania.
2. The Child's biological father is MG ("Father"). Father is currently residing at 1839 Willow Street, #2, McKeesport, Pennsylvania.
3. The Child's biological mother is MS ("Mother"). Mother is currently residing at 101 Boak Avenue, Lot 4, Hughesville, Pennsylvania.
4. At the time of Child's birth, Mother and Father were not married, nor have they ever been married.

5. Mother informed Father that she was pregnant and when she was being induced to give birth. Father had no contact with Mother after the birth of the Child.

6. In July of 2017, Mother called LL and asked her to keep the Child because she was getting kicked out of her home and did not know where she would be residing.

7. From approximately July 2017-February 2019, Mother resided in the home of Jean Heisley, who is the mother of LL. Mother would see the Child when the families got together for visits.

8. On August 10, 2017, Mother filed a Complaint for Custody with regard to the Child, naming the maternal grandmother, TS ("Grandmother"), as Defendant. The Complaint does not mention the Child's father, but indicates that the best interest of the Child would be served by granting physical and legal custody to EL and LL.

9. A custody conference was held on September 8, 2017, at which time EL and LL were added as Defendants and all parties agreed that legal custody would be shared between Mother and EL and LL. EL and LL were granted primary physical custody and Mother was granted periods of visitation as she and EL and LL could agree, to be supervised by EL and LL. TS was granted periods of visitation as agreed to by EL and LL, with the conditions that she could not take the Child to her home and she must be alone during the visits.

10. On April 17, 2019, a custody conference was held, after which an Order was entered granting EL and LL legal custody of the Child, with the requirement that they notify Mother of any doctor appointments for the Child. EL and LL were granted primary physical custody of the Child. Mother and Grandmother were granted physical custody of the Child each Friday from 4:00 p.m. until 7:00 p.m. These visits were to take place in the community and not at the home of either Mother or Grandmother.

11. On June 17, 2020, EL and LL filed a Petition to Modify Custody, alleging that Mother and Grandmother were estranged and Mother was at an unknown address.

12. On June 23, 2020, Grandmother filed a Petition for Modification of Custody Order, requesting additional time with the Child in the form of a full day of visitation on a weekend day, and that she not be required to share her visitation time with Mother.

13. On August 26, 2020, an Order was entered granting Mother a period of three hours of physical custody each week, to be agreed upon by Mother and EL and LL, separate and apart from Grandmother's three hours of physical custody each week.

14. A custody trial on the Petitions for Modification was scheduled for March 23, 2021. Due to the pending Petition for Involuntary Termination of Parental Rights, counsel for EL and LL filed a Motion to Stay the custody trial, which was addressed at the time scheduled for the custody trial.

15. At the March 23, 2021, hearing, all parties agreed that in the interest of judicial economy, sufficient evidence would be presented at the hearing on the Petition for Involuntary Termination of Parental Rights to enable the Court to make a decision regarding the Petitions to Modify Custody in the event the Court did not grant the request for termination of parental rights.

16. Despite numerous Orders in both the custody and adoption matters directing her to do so, Mother never contacted Angela Lovecchio, Esquire, the Guardian Ad Litem and subsequent legal counsel for the Child.

17. Despite having the ability under the Court Order to exercise her visits with the Child in person, Mother chose to exercise the majority of her custodial periods via

FaceTime. The Child is very active and often does not engage well with Mother during the FaceTime calls.

18. Mother did not call the Child on his most recent birthday.

19. Mother has never paid any financial support to EL and LL, either informally or through a court order, for the care they have provided for the Child.

20. Mother has neither made nor attended a doctor appointment for the Child for at least a year and a half.

21. Mother has never discussed with EL and LL her wishes regarding the Child's schooling or religion.

22. The Child has lived in EL and LL' home since July 2017, when Mother requested that he stay there "temporarily."

23. The Child is very bonded with EL and LL. He calls EL "Doo" or "Daddy Doo" and LL "Mama Bear." He calls Mother "Mom."

24. EL and LL have provided for all of Child's physical and emotional needs since July of 2017.

25. EL and LL are ready, willing, and able to adopt the Child.

Discussion

EL and LL 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). 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 the Petition for Involuntary Termination of Parental Rights was filed, Mother failed to perform her parental duties for a period well in excess of six (6) months. Additionally, although Mother testified that she eventually wants the Child - as well as her other two children who are the subject of separate termination of parental rights/adoption cases – to live with her, her actions have shown otherwise and this Court finds that she has evidenced a settled purpose to relinquish parental claim to the Child.

A parent has an affirmative duty to take an active role in a child's life; Mother has clearly not met this affirmative duty and has displayed a passive interest, at best, in the Child since asking EL and LL to take custody of him nearly 4 years ago. For the duration of his time in EL and LL' home, the Child's greatest needs have been food, shelter, clothing, medical care, nurturing, and comfort. Thus, in order to satisfy her obligation to perform parental duties, Mother would have to feed the Child when he was hungry, ensure that he had proper clothing and hygiene, provide stable housing, make and attend medical appointments, provide financial support for the Child, and comfort him when he was sick or scared. Mother has performed none of these duties for well in excess of 6 months and the Child has had to rely on EL and LL to provide for all of his physical and emotional needs since he was approximately 11 months old.

Mother did not bother to call the Child or buy a gift for him on his most recent birthday. In fact, Mother has not paid any financial support to EL and LL to assist them in raising her Child, either through purchasing basic necessities for the Child or by providing cash payments to EL and LL to be used for the benefit of the Child. When asked why she had not provided any financial support for the Child, Mother first

responded by stating “they never asked,” but also acknowledged it was her duty to do so. Mother testified that she did buy items and gifts for the Child, but did not give them to EL and LL because she believed they would not allow the Child to wear any clothes or play with any toys she purchased. Her assertion that she purchased these items for use/wear in her home was ironic, given the fact that Mother very rarely exercised her periods of custody in-person.

This Court further finds that EL and LL have established that Mother has evidenced a settled purpose of relinquishing parental claim to the Child. When Mother initially asked EL and LL to take custody of the Child, it was with the understanding that it would be a temporary situation until Mother got back on her feet and found stable housing. However, more than 3 ½ years elapsed before EL and LL finally filed the Petition for Involuntary Termination of Parental Rights. During that time, Mother bounced from several residences, including her mother’s and her step-grandmother’s homes. Mother testified that she has lived in a 3 bedroom trailer since March of 2020 and has a “written agreement” with the owner. Although speculation was raised about others living in or staying at the trailer, Mother testified that she lives alone and that she filed a Petition for Modification of Custody with the expectation that she would reside there with all three of her children. While the docket does not reflect Mother filing such a petition, she has stated her wish for more time when other parties’ petitions were before the Court. Mother testified that she would like custody every other weekend “to prove to people she can be a mom.”

However, Mother has had nearly four years to “prove to people she can be a mom” and has intentionally chosen to prioritize other things in her life. Mother has continued to have a period of physical custody for only three hours each week. The

docket does not reflect that Mother ever filed her own Petition to Modify Custody in an attempt to gain additional custodial time with the Child. Despite having no court-ordered restrictions on in-person visits, Mother chose to exercise the majority of her custody time via FaceTime, which is not conducive to establishing and maintaining a bond with the Child, who is very active and often has difficulty sitting still long enough to engage with Mother on these types of visits. During these FaceTime calls, Mother rarely took advantage of the full 3 hours she was allotted and often did not call at all. Notably, Mother has never reached out to the Guardian Ad Litem/counsel for the Child during the pendency of the custody and adoption matters. When questioned about her refusal to do this, despite being directed to in numerous Court orders, Mother testified that she was “busy getting a job and cleaning her home getting it ready for her kids.”

This Court finds that what was originally intended to be a temporary arrangement for custody of the Child has evolved into an almost four year situation, and Mother has taken very few steps, if any, to regain custody of the Child. Mother testified that she is supposed to be “100% stable” before she can take care of kids, but the simple fact that Mother has done nothing at all to expand her custodial time despite having two jobs and living in the same three bedroom trailer for over a year is indicative of her evidencing a settled purpose to relinquish claim to the Child. This Court finds that grounds for termination of Mother’s parental rights exist under 23 Pa.C.S. §2511(a).

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)).

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, there was very little evidence presented of any bond between the Child and Mother, given the age of the Child at the time he began residing with EL and LL and the limited in-person contact that he has had with Mother. Although there was testimony that he does call Mother “Mom,” this Court finds that may be only because that is how EL and LL refer to Mother when speaking about her. Additionally, the existence of some bond with Mother does not necessarily defeat termination of her

parental rights. **In re K.Z.S.**, 946 A.2d, 753, 764 (Pa.Super. 2008). The question becomes whether the bond between the Child and Mother is the *one worth saving* or whether it could be sacrificed without irreparable harm to the Child. **Id.** (emphasis added). Termination of Mother's rights would not destroy an existing necessary and beneficial relationship as the bond, if any, between Mother and Child is not anywhere near as strong as the bond between Child and EL and LL. There was copious evidence that the Child is very bonded with EL and LL, with whom he has lived since before his first birthday. It is EL and LL, and not Mother, who have provided love, guidance, and support for the Child in addition to fulfilling his basic physical needs. It is evident to the Court that EL and LL deeply love and care for the Child and to remove him from their home would destroy the only continuity he has had in the past several years. The Child has thrived in the home of EL and LL, who have stepped in and assumed the parental responsibilities that Mother has utterly failed to perform and has evidenced a settled purpose of relinquishing.

The Court is satisfied that the bond between the Child and EL and LL is the primary bond to protect. EL and LL understand the rights and responsibilities associated with adopting the Child, and that termination Mother's parental rights and allowing the adoption by EL and LL to proceed is in the best interest of the Child.

Conclusions of Law

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

2. The Court finds that EL and LL have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of OS will

best be served by termination of MS'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. 2021-6740**
: :
ADOPTION OF : :
OS, : :
: :
minor child : :

DECREE

AND NOW, this 10th day of **May, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of MS, held on May 3, 2021, it is hereby **ORDERED and DECREED**:

- (1) That the parental rights of MS 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 mother.

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