

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

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

ORDER

AND NOW, this 16th day of **July, 2021**, pending before the Court is the Involuntary Termination of Parental Rights filed by EL and LL on March 10, 2021. Said Petition is in regard to the parental rights of OS, born September 21, 2016. An Order was entered on May 10, 2021, involuntarily terminating the parental rights of the Mother, MS. Remaining before the Court at this time is the involuntary termination of the parental rights of the child's biological father, MG.

An Order was entered by this Court on March 23, 2021, advising Father 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. Father did notify the Court of his request to have counsel, and an Order was therefore entered on April 14, 2021, appointing John Gummo, Esquire, as counsel for Father. A hearing on the Petition to Involuntary Termination the biological Mother's and Father's Parental Rights was held on May 3, 2021. EL and LL appeared with their counsel, Mary Kilgus, Esquire. Mother appeared with her counsel, Dance Drier, Esquire; Father was present and was represented by John Gummo, Esquire. Angela Lovecchio, Esquire, Counsel for OS, was also present at the hearing.

At the beginning of the hearing, Father, through his counsel, expressed his desire to voluntarily relinquish his parental rights. He agreed to sign a consent to adopt to be prepared by counsel for LL and EL. The Court did hear brief testimony from LL who indicated that OS had been in their custody since July of 2017 and she had no contact with Father whatsoever prior to the hearing. Mother also briefly testified that she notified Father that she was pregnant and when she was being induced, but had no contact with Father following OS's birth. All parties stipulated that, in the event MG failed to sign a consent or revoked his 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 Father based upon the testimony given at the hearing. Father was given the opportunity to present testimony, but chose not to. After the limited testimony was taken in regard to Father, Father and his counsel asked, and were granted permission, to be excused from the remainder of the hearing on that date.

On July 13, 2021, the Court held a conference with counsel for the Petitioners and Father to determine the status of the termination of Father's parental rights. As of this date, a petition to confirm consent has not filed. Present at the conference on July 13, 2021, was Mary Kilgus, Esquire, counsel for the Petitioners, and John Gummo, Esquire, counsel for Father. Father was provided with notice of the conference through the Court and did not appear at the conference. Counsel for Father indicated that he spoke with Father the day of the hearing on May 3, 2021. At that time, it was Father's intent to sign a consent for the voluntary relinquishment of his parental rights. On May 6, 2021, Father's counsel overnighted to him the consent for his signature, along with an agreement for continuing contact between Father and the child. Father's counsel then sent by regular mail the consent and agreement for continued contact to Father on May 11, 2021. Finally, Father's counsel forwarded the Order entered on May

21, 2021, involuntarily terminating Mother's parental rights. Father has never returned any documentation to his counsel, nor has he reached out to his counsel. Father's counsel has attempted to contact Father several times on the phone number that he spoke with him on several occasions prior to the hearing. He has been unable to speak with anyone when contacting that number. As of the date of the conference on July 13, 2021, Father's counsel had not had any contact with Father since the date of the original hearing on May 3, 2021.

This Order is entered based upon the testimony presented on May 3, 2021, in light of the fact that Father stipulated that if he failed to sign the consent to adopt or revoked his consent to adopt within a thirty-day statutory window period, that the Court could proceed to make a determination based upon the limited testimony given at the hearing.

Findings of Fact

1. OS ("Child") was born on September 21, 2016. The Child currently resides with his maternal great Aunt and Uncle, LL and EL (collectively, "LL and EL") 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. At no time after the birth of the Child up to the present did Mother have any contact with Father.

7. EL and LL have had physical custody of OS since July, 2017.

8. At no point since July of 2017 has Father ever reached out to, or had contact with OS.

9. The day of the Termination Hearing on May 3, 2021, is the first time LL and EL ever saw or heard from Father.

10. Mother advised LL and EL that MG was OS's father the day she placed OS with them.

11. Father has never paid child support, provided any financial support, or purchased anything for the Child.

12. OS refers to LL as "mama bear" and EL as "daddy doo".

13. OS has never met Father and would have no idea who he was if he did meet him.

14. There is no bond between OS and Father.

Discussion

LL and EL 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, Father has failed to perform his parental duties for a period well in

excess of six (6) months. In fact, he has never performed a single parental duty in relation to OS. The Court finds that Father 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; Father has clearly not met this affirmative duty and has displayed no interest at all in OS. Father has relied on others to provide for all of OS's physical and emotional needs since his birth.

Father has clearly evidenced a settled purpose to relinquish his parental claim to OS. He has failed to, in any way, establish any parental claim to the child. On the day of the Termination Hearing, he was willing to voluntarily consent to the termination of his parental rights. Sadly, as he has demonstrated throughout OS's life, Father failed to even following through with that.

This Court finds that grounds for termination of Father'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).

There is absolutely no bond between OS and Father. Termination of Father’s rights would not destroy an existing necessary and beneficial relationship as there is no relationship or bond. There was copious evidence that the Child is very bonded with LL and EL, with whom he has lived since before his first birthday. It is LL and EL 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 LL and EL 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 LL and EL, who have stepped in and assumed the parental responsibilities that Father has utterly failed to perform and has evidenced a settled purpose of relinquishing.

The Court is satisfied that the bond between the Child and LL and EL is the primary bond to protect. LL and EL understand the rights and responsibilities associated

with adopting the Child, and that termination Father's parental rights and allowing the adoption by LL and EL 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 MG'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 MG'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 16th day of **July, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of MG, held on May 3, 2021, it is hereby **ORDERED and DECREED**:

- (1) That the parental rights of MG 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