

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

IN RE: : **NO. 2021-6747**
 :
ES, :
 :
 Minor child :
 :

OPINION AND ORDER

AND NOW, this 22nd day of **October, 2021**, before the Court is ABW and LG's ("Petitioners") Petition for Involuntary Termination of Parental Rights of RS ("Father") filed on May 21, 2021, with regard to ES ("Child"). Petitioner, ABW is the biological Mother of the Child and Petitioner, LG, is Mother's husband and not related by blood to the Child. At the time of the hearing, Petitioners were present and represented by Allison Grady, Esquire.

Father failed to appear at the hearing and was unrepresented. Pursuant to the Petitioners' Motion for Substituted Service, a private investigator determined Father's address to be [], Hazel Township Pennsylvania and the Petition for Adoption, Petition to Involuntarily Terminate Parental Rights, and other related documentation was sent to that address by certified and regular mail. Court Orders were also sent to this address, but they were returned stating that no mail receptacle was present at that address. Pursuant to the Court's September 3, 2021 Order, Petitioners effectuated service on Father by publication on September 10, 2021 when Notice of the hearing was published in The Standard Speaker in Luzerne County.

For these reasons, the Court proceeded with the termination hearing without Father present.

Findings of Facts

The Child was born on [] and is seven (7) years old. He is the child of ABW and RS. The last time Father saw Child was when Child was six (6) months old, over six (6) years ago. In March 2021, when Father was released from prison, he indicated to Mother that he would like a relationship with Child but has attempted no contact with Mother or Child since that time, despite Mother's attempts to contact him. For the last five (5) years, Father has performed no parental duties and has not even had any contact with Child.

Child now resides with Mother and her husband, the other Petitioner, LG. Child calls LG "dad" and Mother testified that LG plays with Child, does various activities with him, and is Child's primary provider.

Discussion

Petitioners argue that the basis for termination in this case may be found in 23 Pa.C.S. §2511(a)(1) which provide 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).

Here, Father's last contact with Child was over six (6) years ago. While he indicated to Mother that he desired to have a relationship with Child, he has taken to

steps to do so and in fact has avoided Mother's attempts to contact him altogether. Additionally, there is no evidence that Father has ever performed any parental duties for Child including taking him to school, bathing him, dressing him, feeding him, going to a sports game, or emotionally supporting him in any way for the entirety of Child's life.

The Court hereby finds by clear and convincing evidence that Petitioners have fulfilled the requirements of 23 Pa.C.S. §2511(a)(1) in that, for at least six months prior to the filing of the termination petition, Father has demonstrated a settled purpose to relinquish parental claim to Child and has failed to perform his parental duties.

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).

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).

Mother testified that Father has not seen Child since he was six (6) months old and it is likely that Child does not even know who Father is. He calls LG "dad" and LG is the primary father figure in Child's life.

The Court is satisfied that termination of Father's parental rights would not destroy an existing bond, if one ever existed, or cause any trauma to the Child and that permanency in the form of adoption 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 RS, 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, if one ever did exist, between RS 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,

Ryan M. Tira, Judge

CC: Allison Grady, Esq.
RS
Alexandra Sholley – Judge Tira’s Office
Gary Weber, Esq.

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IN RE: : **NO. 2021-6747**
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ES, :
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DECREE

AND NOW, this **22nd** day of **October, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of RS, held this date, it is hereby ORDERED and DECREED:

- (1) That the parental rights of RS 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,

Ryan M. Tira, Judge

CC: Allison Grady, Esq.
RS
Alexandra Sholley – Judge Tira's Office
Gary Weber, Esq.