

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

IN RE: : **NO. 2021-6745**
:
IDK, :
:
Minor child :

OPINION AND ORDER

AND NOW, this 17th day of **September, 2021**, before the Court is CK and BM's ("Petitioners") Petition for Involuntary Termination of Parental Rights of DL ("Father") filed on May 7, 2021, with regard to IDK ("Child"). Petitioner, CK is the biological Mother of the Child and Petitioner, BM, is Mother's fiancé and not related by blood to the Child. At the time of the hearing, Petitioners were present and represented by Melody Protasio, Esquire.

Father failed to appear at the hearing and was unrepresented. Pursuant to the Affidavit of Service, Father, who is currently incarcerated at SCI Smithfield was served with the Petition for Involuntary Termination of Parental Rights and the Order scheduling this hearing, along with other documents, on May 28, 2021 by certified mail. The Order scheduling this hearing, dated June 25, 2021 indicated that if Father wished to participate in the hearing and have counsel appointed for him, he was to advise the Court in writing of such prior to July 30, 2021. The Court has received no such notice from Father that he wished to participate in the hearing or have counsel appointed. For these reasons, the Court proceeded with the termination hearing without Father present.

Findings of Facts

The Child was born on January 25, 2013 and is nine years old. He is the child of CK and DL. Mother and Father were never married and were not in a relationship at the time of Child's birth due to Father's incarceration at that time. During the time of Father's incarceration, Mother obtained a Custody Order awarding her sole physical custody of Child and shared legal custody when Father was not in prison. While Father was incarcerated, Mother took Child to see Father in prison and Father sent letters to the Child about once per week. Child was two years old when Father was released in 2015 and, for approximately four months following his release, Father had some supervised visits with Child until he went back to prison. Father was out of prison from December 2019 through approximately December 2020, when he was again incarcerated. During that year, Father called Mother twice and spoke to Child once in August 2020. During the call with Child, Child became angry with him and hung up the phone. Father's last physical contact with Child was in 2015 when Child was two years old and his last contact at all was by phone in August 2020.

Child now resides with Mother and her fiancé, the other Petitioner, BM. Child says that he has two dads – a “bad one” and a “good one,” referred to Father as the “bad one.” Mother testified that Child would not recognize Father now and that there is no bond between them.

Father is currently incarcerated on attempted murder and murder charges. His sentence is life imprisonment plus 20-40 years. During his most recent incarceration, Father has sent letters directly to Petitioners, which contain threats on their lives. The letters do not reference Child at all but do reference the termination proceedings.

Discussion

Petitioners argue that the basis for termination in this case may be found in 23 Pa.C.S. §2511(a)(1) and (2) 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.
- (2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for her physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

In order to involuntarily terminate parental rights, Petitioners must prove at least one of the above subsections 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 physical contact with Child was six years ago and his last phone contact with him was about one year ago. He has been in and out of prison since Child was born and, most recently, has made no attempts to keep in contact with Child but is more concerned about threatening the lives of Petitioners. He has not so much as inquired about the well-being of Child. Additionally, Father has had several opportunities to perform parental duties for Child, but has not only refused to do so but has failed to keep in contact with Child at all. There is no evidence that Father has ever taken Child to school, bathed him, clothed him, fed him, gone to a sports game, or emotionally supported 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 sixth 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.

To satisfy the requirements of Section 2511(a)(2), the Petitioners must demonstrate that Father, through:

(1) [R]epeated and continued incapacity, abuse, neglect or refusal; (2) has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being; and (3) the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.

In re: Adoption of M.E.P., 825 A.2d 1266, 1272 (Pa. Super. 2003.)

Under Section 2511(a)(2), “[t]he grounds for termination [of parental rights] due to parental incapacity that cannot be remedied are not limited to affirmative misconduct. To the contrary, those grounds may include acts of refusal as well as incapacity to perform parental duties.” **In re: A.L.D.**, 797 A.2d 326, 337 (Pa. Super. 2002) (citations omitted).

Here, as described above, in the past six years, other than two phone calls, Father has made no attempts at being or staying in Child’s life. He has refused to do so. That refusal, but for Mother’s parental care, caused Child to grow up without a Father figure who provides the emotionally and physical support Child needs. In fact, Father’s refusal to be a part of Child’s life has made Child angry with him and painted a picture in Child’s mind that Father is his “bad dad.” Now, Father is incarcerated for the rest of his life. He has sent two threatening letter to Petitioners but has not made any attempts to speak with

Child. It is clear to the Court that Father has no interest in remedying his past refusal to be a part of Child's life.

The Court finds by clear and convincing evidence that the Petitioners have fulfilled 23 Pa.C.S. §2511(a)(2) by demonstrating that Father's repeated and continued refusal has caused the Child to be without essential parental control or subsistence necessary for his physical and mental well-being.

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).

It is clear from the Child's own thoughts and feelings that no bond exists between he and Father. In fact, the Child considers another man his "good" father for all intents and purposes, rather than his biological father, and relies on BM to provide him the parental that Father has failed to provide throughout the Child's life. In fact, Mother testified that Child would not even recognize Father and, during the last phone contact that Child had with Father, Child became angry and hung up on 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 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 DL, 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 DL has exhibited repeated and continued refusal which has caused the Child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the refusal cannot or will not be remedied by him pursuant to 23 Pa.C.S. §2511(a)(2).

3. The Court finds that the Petitioners have established by clear and convincing evidence that no bond exists, if one ever did exist, between DL 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: Melody Protasio, Esq.
DL
Alexandra Sholley – Judge Tira’s Office
Gary Weber, Esq.

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IN RE: : **NO. 2021-6745**
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DECREE

AND NOW, this 17th day of **September, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of DL, held this date, it is hereby ORDERED and DECREED:

- (1) That the parental rights of DL 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: Melody Protasio, Esq.
DL
Alexandra Sholley – Judge Tira's Office
Gary Weber, Esq.