

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

IN RE: : **NO. 6649**
:
WH, :
:
Minor child :
:

OPINION AND ORDER

AND NOW, this 26th day of **January, 2021**, before the Court is Lycoming County Children & Youth Services' ("Agency") Petition for Involuntary Termination of Parental Rights of JH ("Father") filed on October 27, 2020 with regard to WH ("Child"). A hearing on the Petition for Involuntary Termination of Parental Rights was held on January 19, 2021. Father was present at the beginning of the proceeding but shortly thereafter exited the hearing. Father was represented by Patricia Shipman, Esquire. John Pietrovito, Esquire, Solicitor for the Agency, and Angela Lovecchio, Esquire, counsel for the Child, were also present at the hearing. JCC ("Mother") signed a Consent to Adopt on November 6, 2020 and was not present at the hearing. Her counsel, Dance Drier, Esquire, did appear on her behalf and was subsequently excused from the proceeding following the confirmation of Mother's consent.

Findings of Facts

At the outset of the hearing, all parties concurred to the allegations set forth in paragraphs A-E, G1, H1-H10, and I1-I35 of the Agency's Petition. Therefore, the Court accepts as true all allegations set forth in these paragraphs and will summarize them below for the purpose of this Opinion.

The Child was born on June 15, 2016. She is the child of JH, date of birth June 22, 1981, and JCC, date of birth November 19, 1977. Mother and Father were not married at the time of the Child's birth.

The Child was placed in the Agency's care on June 14, 2018 on an emergency status after Mother was found unconscious in her vehicle in a Weis Markets parking lot with the Child in the back seat. Father was incarcerated at that time on receiving stolen property charges. A Shelter Care Hearing was held the following day at which point Mother tested positive for several illicit drugs. A Dependency Hearing was held on June 25, 2018 at which point Father was still incarcerated. Upon his release, Father underwent a drug and alcohol evaluation and it was recommended that he participate in intensive outpatient counseling. Mother and Father, who were living together, had in-home visitation with the child until August 2018 but, due to several positive tests for illicit drugs, visitation was moved back to the Agency and, since that time, all visitation between the parents and the Child has been supervised by the Agency.

Permanency Review Hearings were held on August 28, 2018, December 6, 2018, April 5, 2019 and July 23, 2019. At the time of the August 2018 hearing, both parents tested positive for Cocaine, Tramadol, and Methadone. Father was not prescribed any of these drugs and the Court found that Father's drug issues were more significant than initially thought. Despite beginning services with Outreach and starting treatment at Crossroads Counseling, Father was never consistent in his treatment and was discharged from Crossroads in December 2018 for non-compliance. In February 2019, the parents were evicted from their home, were living outside of Lycoming County with family and friends for a while, and eventually requested a decrease in visitation with

the Child due to living so far away. In March 2019, the parents returned to Lycoming County and were living in a home where a stabbing occurred and drugs were present.

At the time of the April 2019 hearing, Father was found to have minimal compliance and no progress. He was homeless, unemployed, and tested positive for Cocaine, Alcohol, and Methamphetamines at the time of the hearing. The Court found minimal compliance and no progress for both parents at the July 2019 hearing. The Agency had previously filed a Petition for Termination of Parental Rights, the first day of trial on September 4, 2019. The Agency later withdrew its Petition on December 13, 2019.

After the first Petition was withdrawn, additional Permanency Review Hearings were held on January 21, 2020, May 19, 2020, and September 4, 2020. At the time of each hearing, the Court found Father to have minimal to no compliance and no progress. He was arrested on January 26, 2020 for public drunkenness and was again arrested from an incident occurring on June 19, 2020 for terroristic threats and harassment. Aggravated Circumstances were granted regarding Father on September 4, 2020 and no further reunification efforts were ordered. Father has had no contact with the Agency since the spring of 2020, has not seen or spoken to the Child since December 30, 2019, and has not completed any goals set forth on the service plans. Additionally, since at least December 30, 2019, Father has not sent the Child any cards or gifts, has not attended any of her medical appointments, and has not inquired about her wellbeing.

The Agency filed its Petition for Involuntary Termination of Parental Rights on October 27, 2020 and the hearing was held on January 19, 2021 and, as stated above, Father was present for the start of the hearing but shortly thereafter exited hearing.

Father indicated under oath and on record at the start of the hearing that he is not opposing the Petition for Involuntary Termination of Parental Rights.

Discussion

The Agency argues that the basis for termination in this case may be found in 23 Pa.C.S. §2511(a)(1), (2), (5) and (8), 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.
- (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 his 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.
- (5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.
- (8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

In order to involuntarily terminate Father's parental rights, the Agency must prove by clear and convincing evidence one of the above subsections of 23 Pa.C.S. §2511(a).

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).

There have been no facts presented that show Father has ever made an effort to reunify with the Child. To the contrary, Father has failed to cooperate with the Agency and other counseling or treatment agencies in an attempt to help him reunify with the Child. Father has not completed any of the goals established for him, he has not seen his Child in over a year, and he has made no attempts to contact her or even inquire as to how she is doing. He has not had any unsupervised visits with the Child since August 2018 and had at some point requested a decrease in any visits he did have. Father has taken no steps toward building a relationship with the Child, even before the Court ordered that the Agency make no more reunification efforts. At the termination hearing, Father was given an opportunity to express any intention of being a part of his Child's life and, even then, decided to leave the proceeding altogether.

Father has failed to maintain any contact with his Child in over one year, failed to maintain any contact with the Agency in almost one year, and failed to take advantage of all the resources offered to him to help him maintain a bond with the Child and overcome his addiction issues. Therefore, this Court is satisfied that he has demonstrated a settled purpose of relinquishing parental claim to the Child.

Additionally, grounds for termination under 23 Pa.C.S. 2511(a)(1) may be proven where a parent fails to perform parental duties for a period in excess of six months prior to the filing of the Petition for Involuntary Termination of Parental Rights.

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 Agency filed its petition on October 27, 2020, making the relevant time period for purposes of this section from April 27, 2020 through October 27, 2020. Father has had no contact with the Agency since at least May 2020 and has had no contact whatsoever with the Child since December 2019. He has not sent the Child gifts, money, or letters. He has not fed her, bathed her, put her to bed, taken her to school, attended her doctors' appointments, or even asked about how she is doing. Pursuant to

the above case law, a mere passive interest in the Child is not enough to meet her needs. It is clear to the Court that Father has not even shown a *passive* interest, but *no* interest at all. The Court hereby finds by clear and convincing evidence that the Agency has fulfilled the requirements of 23 Pa.C.S. §2511(a)(1) in that Father has both evidenced a settled purpose to relinquish parental claim to the Child *and* failed to perform his parental duties for at least six months prior to the filing of the termination petition.

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

- (1) [R]epeated and continued incapacity, abuse, neglect or refusal; (2) such incapacity, abuse, neglect or refusal 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). “Moreover, an agency is not required to provide services indefinitely if a parent is either unable or unwilling to apply the instruction given.” **Id.** at 340. “Parents are required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities. ... [A] parent’s vow to cooperate, after a long period of uncooperativeness regarding the necessity or availability of services, may properly be rejected as untimely or disingenuous.” **Id.**, quoting **In re J.W.**, 578 A.2d 952, 959 (Pa. Super. 1990).

“When a child is in foster care, this affirmative duty requires the parent to work towards the return of the child by cooperating with the Agency to obtain rehabilitative services necessary for them to be capable of performing their parental duties and responsibilities.” **In re: G.P.-R.**, 851 A.2d 967, 977 (Pa.Super. 2004).

Father was incarcerated at the time the Child was taken into the Agency’s custody in June of 2018. Since that time, Father has been in and out of prison several different times and has tested positive multiple times for a variety of illicit drugs. When Father was not in prison, he was homeless or living in housing unfit for a child. Father has failed to make any progress towards reunification and has failed to make any efforts to perform parental responsibilities. In fact, he has not seen or spoken with the Child in over one year. Despite the Agency’s attempts to help Father get back on his feet, it is clear that he either refuses to remedy the neglect of his Child or lacks the capacity to care for her, as evidenced by his repeated incarcerations and substance abuse.

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

“Termination of parental rights under Pa.C.S. § 2511(a)(5) requires that: (1) the child has been removed from parental care for at least six months; (2) the conditions which led to removal and placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child.” **In re: K.J.**, 936 A.2d 1128, 1134 (Pa. Super. 2007).

Similarly, to terminate parental rights pursuant to 23 Pa.C.S. § 2511(a)(8), the following factors must be demonstrated: “(1) [t]he child has been removed from parental care for 12 months or more from the date of removal; (2) the conditions which led to the removal or placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child.” **In re: Adoption of M.E.P.**, 825 A.2d 1266, 1275-76 (Pa. Super. 2003). “Section 2511(a)(8) sets a 12-month time frame for a parent to remedy the conditions that led to the children’s removal by the court.”

In re: A.R., 837 A.2d 560, 564 (Pa. Super. 2003). After the 12-month period has been established, the Court must next determine whether the conditions necessitating placement persist, despite the reasonable good faith efforts that the agency supplied over a realistic time period. **Id.** In terminating parental rights under Section 2511(a)(8), the trial court is not required to evaluate a parent’s current “willingness or ability to remedy the conditions that initially caused placement”. **In re: Adoption of T.B.B.**, 835 A.2d at 396 (Pa. Super. 2003); **In re: Adoption of M.E.P.**, 825 A.2d at 1276.

The Child was removed from parental care in June 2018, two and a half years ago. Father was incarcerated at the time the Child was removed and has been incarcerated on and off throughout the dependency of this case. He continued to abuse illicit drugs and other substances and failed to cooperate or attend his counseling and treatment programs. At all Permanency Review Hearings held after the first Petition for Termination of Parental Rights was withdrawn, Father was found to have minimal to no compliance and no progress towards alleviating the conditions which necessitated the Child’s placement. It is

clear that Father has been unable and continues to be unable and/or unwilling to care for his Child or even to work toward reunification with his Child. The Court therefore finds that the Agency has proven by clear and convincing evidence that grounds for termination of Father's parental rights exist under both Sections 2511(a)(5) and (8).

As the Court has found that statutory grounds for termination have been met under all four subsections of 23 Pa. C.S. §2511(a) contained in the Petition to Involuntarily Terminate Parental Rights, 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).

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).

The Child was almost exactly two years old when she was taken into custody. She is now four and a half and has not seen Father in over a year. Due to Father's periods of incarceration, he has been sporadically in and out of the Child's life until December 2019 when he stopped seeing or even contacting her altogether. When Father was not in prison, he continued to use drugs, was homeless, and remained incapable of being a steady presence in his daughter's life. It is unlikely that the Child even remembers who her Father is. Currently, the Child is in a loving and stable home. She consistently says that she wants to be a member of that family. The Court is satisfied that termination of Father's parental rights would not destroy any bond, if one exists, or cause any trauma to the Child and that permanency in the form of adoption by those who have met her needs since June 2018 is in the best interest of the Child.

Conclusions of Law

1. The Court finds that the Agency has established by clear and convincing evidence that JH, 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 Agency has established by clear and convincing evidence that JH, has exhibited repeated and continued incapacity, abuse, neglect or 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 incapacity, abuse, neglect or refusal cannot or will not be remedied by him pursuant to 23 Pa.C.S. §2511(a)(2).

3. The Court finds that, the Agency has established by clear and convincing evidence that the child has been removed from JH's care for a period of at least six months, that the conditions which led to the removal or placement of the child continue to exist, that the conditions which led to the removal or placement of the child are not likely to be remedied within a reasonable period of time, and that termination of Father's parental rights would best serve the needs and welfare of the child pursuant to 23 Pa.C.S. §2511(a)(5).

4. The Court finds that, the Agency has established by clear and convincing evidence that the child has been removed from JH's care for a period of twelve months or more, that the conditions which led to the removal or placement of the child continue to exist, and that termination of Father's parental rights would best serve the needs and welfare of the child pursuant to 23 Pa.C.S. §2511(a)(8).

5. The Court finds that the Agency has established by clear and convincing evidence that no bond exists between JH 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

RMT/ads

CC: Lycoming County Children and Youth Services
John Pietrovito, Esq.
Angela Lovecchio, Esq.
Dance Drier, Esq.
Tricia Shipman, Esq.
CASA
Gary Weber, Esq.

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

IN RE: : **NO. 6649**
:
WH, :
:
Minor child :
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DECREE

AND NOW, this 26th day of **January, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JH, held on January 19, 2021, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JH be, and hereby are, involuntarily 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

RMT/ads

CC: Lycoming County Children and Youth Services
John Pietrovito, Esq.
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