

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

IN RE: : **NO. 2022-6806**
:
AH and DH, :
:
minor children :
:

OPINION AND ORDER

AND NOW, this 13th day of **December, 2022**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by DH and his wife, LH, on May 6, 2022. Said petition is with regard to the rights to DH's children, AH, born [redacted], and DH, born [redacted]. DH and LH seek to terminate the parental rights of the children's biological mother, HH(D), as a prerequisite to having the children adopted LH.

A pre-hearing conference on the Petition was held on July 19, 2022. DH and LH appeared personally and were unrepresented. HH (D) appeared personally and indicated her objection to the termination of her parental rights. An Order was entered scheduling the hearing on the Petition for Involuntary Termination of Parental Rights for October 10, 2022. Jessica Feese, Esquire, of the Public Defender's Office was appointed as counsel for HH(D) and Sarah Stigerwalt-Egan, Esquire, was appointed as counsel for the children.

The hearing was continued to December 12, 2022, and Jeana Longo, Esquire, also of the Public Defender's Office, took over representation of HH(D). DH and LH appeared and were unrepresented. Sarah Stigerwalt-Egan, Esquire, appeared as counsel for AH and DH.

Finding of Facts

1. AH was born [redacted], and DH was born on [redacted] (“Children”). The Children currently reside with their father, DH (“Father”) and his wife, LH (“Stepmother”) at [redacted].

2. Father and Stepmother have been in a relationship since 2013.

3. The Children’s biological mother is HH(D) (“Mother”). Mother currently resides at [redacted].

4. Mother and Father were married at the time of both the Children’s births; however, they separated prior to the birth of DH.

5. Father primarily had custody of AH after he and Mother separated, and Mother had custody of DH.

6. When DH was approximately three years old, Mother was in an abusive relationship. Mother sent DH to South Carolina to stay with her mother. Father obtained a Court order to have him returned to his custody.

7. Father received a letter dated May 15, 2014, from Lycoming Children and Youth Services which discussed an indicated report of child abuse naming Mother as the perpetrator and DH as the victim child. The letter explained that DH was abused by Mother’s boyfriend and Mother allowed it to happen.

8. In approximately 2014, DH also began to live with Father and Setpmother.

9. The parties have a custody case at Lycoming County Docket #14-20,068.

10. A custody Order was entered by agreement of the parties on April 30, 2015. Father was granted sole physical custody of the Children.

11. The custody Order indicated “Mother has stated her wish to be awarded no partial physical custody times. She understands she may have physical custody time

with the children only upon Father's agreement, and that she may file a petition to modify this order in the future if she changes her mind."

12. Mother paid child support for a brief period of time in approximately 2014-2015. It was Father's understanding that the case was closed because Mother received disability payments and did not earn enough to have to pay support.

13. Father and Stepmother tried numerous times to facilitate a relationship between Mother and the Children. Father testified that Mother would only have a few visits before going "cold" for months on end.

14. The Children got frustrated by Mother's lack of involvement in their lives and eventually gave up on having a relationship with her. The Children have approached Stepmother and asked her to pursue adopting them.

15. The last time Mother had any in-person contact with the Children was in 2016 or 2017.

16. Mother has not sent any cards or gifts to the Children for their birthdays or holidays since at least 2016.

17. AH had verbal contact with Mother in 2020 while AH was staying in South Carolina with maternal grandmother.

18. After receiving the Petition for Involuntary Termination of Parental Rights, Mother contacted DH. It is unknown whether this contact was via phone, text, or social media.

19. Father and Stepmother have lived in their current home in Salladasburg since 2019. Prior to purchasing this home, they lived in Lock Haven.

20. Father has had the same phone number for at least six years. He believes that Mother has his number. Additionally, Father is on social media.

21. Stepmother reached out to Mother via Facebook at least two times prior to the filing of the Petition for Involuntary Termination of Parental Rights, to see if Mother would agree to her adopting the Children.

22. Mother has accused Father and Stepmother of doing things “behind her back” and creating fake Facebook profiles in their attempts to encourage a relationship between Mother and the Children.

23. Father has never sent Mother pictures of the Children. Mother has never asked Father for pictures or other updates about the Children.

24. Father, Children, Stepmother, and two of her children live together.

25. The Children wish to terminate Mother’s parental rights and be adopted by Stepmother.

26. Stepmother desires to proceed with adopting the Children if the Petition for Involuntary Termination of Mother’s Parental Rights is granted.

Discussion

In cases of termination of parental rights, the burden of proof is on the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so. **In re Adoption of A.C.H.**, 803 A.2d 224, 228 (Pa. Super.2002). The standard of clear and convincing evidence means testimony that is “so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts in issue.” **In re J.D.W.M.**, 810 A.2d 688, 690 (Pa.Super.2002). Father and Stepmother 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 children 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 children 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). The orphans' court must then consider the parent's explanation for his or her abandonment of the child, in addition to any post-abandonment contact. **In re Adoption of C.J.A.**, 204 A.3d 496, 503 (Pa. Super. 2019).

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 children. A children needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the children. 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 children and a genuine

effort to maintain communication and association with the children. Because a children needs more than a benefactor, parental duty requires that a parent "exert himself to take and maintain a place of importance in the children'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 of the filing of the Petition for Involuntary Termination of Parental Rights, Mother has evidenced both a settled purpose of relinquishing parental claim to the Children and has failed to perform her parental duties for a period well in excess of six (6) months.

A parent has an affirmative duty to maintain a place of importance in a child's life and Mother has clearly not met this affirmative duty. In April of 2015, Mother indicated to a Family Court Hearing Officer that she wished to have no specific periods of partial physical custody, and that she understood that she could have custody of the Children upon the agreement of Father. Since the entry of the custody Order in 2015, Mother has shown, at most, a passive interest in the Children. Mother has had minimal, if any, in-person contact with the Children. Mother has failed to perform any basic parental duties for the Children such as preparing meals, helping with homework, attending sporting events, taking them to routine medical and dental appointments, or participating in their educational matters.

The Court finds Father and Stepmother placed no obstacles in Mother's path that would prevent her from exercising her parental rights, privileges, and obligations with regard to Children. Although Mother claims that she did not know how to contact Father

or the Children, Father testified that on numerous occasions he and Stepmother attempted to facilitate Mother being more involved in the Children's lives, and Mother did not take advantage of their offers. Additionally, Mother failed to file a petition for modification of the current custody order to re-establish or enforce her custodial rights.

Since at least 2015, including the six months immediately prior to the filing of the Petition for Involuntary Termination of Parental Rights, Mother was content to have someone else be responsible for attending to all of the Children's physical, mental, and emotional needs. Mother has not supported the Children financially, nor has she sent any cards or gifts for them on their birthdays or holidays. Additionally, Mother has done nothing in terms of providing the Children with intangible support such as comforting them when they are sick, encouraging them when they are scared, or praising their achievements. Simply put, Mother has simply neglected her duty to maintain a place of importance in the Children's lives.

This Court finds that Father and Stepmother have established by clear and convincing evidence that Mother has evidenced a settled purpose of relinquishing parental claim to the Children **and** has refused or failed to perform parental duties for a period well in excess of six months pursuant to 23 Pa.C.S.A. §2511(a)(1).

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 children. 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 Children 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 children.” **In re: J.D.W.M.**, 810 A.2d 688, 690 (citing **In re: Children 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 children--the love, comfort, security and closeness--entailed in a parent-children relationship, as well as the tangible dimension. Continuity of relationships is also important to a children, for whom severance of close parental ties is usually extremely painful. The trial court, in considering what situation would best serve the childrenren’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, the Children are 12 and 13 years old. Mother essentially relinquished her custodial rights in 2015. The last time the Children had any in-person contact with Mother was at least six years ago. Counsel for the Children indicated that it is the position of the Children that they feel very strongly about not wanting to have contact with Mother. It is their wish that Mother’s rights be terminated so that they can be adopted by Stepmother.

Stepmother has been very supportive of the Children and they are extremely bonded with her. They are in a blended family unit with Stepmother’s two children.

They are happy and doing well in school and they have asked on multiple occasions to be adopted by Stepmother. Given the preference of the Children and the extremely limited amount of contact Mother has had with them in the past six years, termination of Mother's parental rights would not destroy an existing necessary and beneficial relationship, as Mother allowed whatever bond they may have had in the past lapse when she made no efforts to maintain a place of importance in their lives. Stepmother has been a mother-figure to the Children since she began her relationship with Father. It is evident to the Court that Stepmother loves and cares for Children and treats them as her own. Stepmother has stepped in and provided the love and stability the Children deserve and has assumed the parental responsibilities that Mother has failed to perform and has evidenced a settled purpose of relinquishing.

The Court is satisfied that both Father and Stepmother understand the potential consequences of allowing Stepmother to adopt the Children, and that terminating Mother's parental rights and allowing the adoption by Stepmother to proceed is in the best interest of the Children.

Conclusions of Law

1. The Court finds that DH and LH have established by clear and convincing evidence that the parental rights of HH(D) should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that DH and LH have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of AH and DH will best be served by termination the parental rights of HH(D).

Accordingly, the Court will enter the attached Decree.

By the Court,

Ryan M. Tira, Judge

RMT/jel

c. DH and LH
Jeana Longo, Esquire
Sarah Stigerwalt-Egan, Esquire – 6 N. Front St., Sunbury, PA 17801
Gary Weber, Esquire
Jennifer Linn, Esquire

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ORPHANS' COURT DIVISION**

IN RE: : **NO. 2022-6806**
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AH and DH, :
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DECREE

AND NOW, this 13th day of **December, 2022**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of HH(D), held on December 12, 2022, it is hereby ORDERED and DECREED:

- (1) That the parental rights of HH(D) be, and hereby are, terminated as to the children above-named;
- (2) That the welfare of the children will be promoted by adoption; that all requirements of the Adoption Act have been met; that the children may be the subject of adoption proceedings without any further notice to the natural mother.

Mother is advised that they may appeal this Order to the Superior Court of Pennsylvania by filing written notice of appeal in the office of Lycoming County Register and Recorder's Office within thirty (30) days of the date of the filing of this Order. In the event either party elects to appeal from this Order they are bound by the Pennsylvania Rules of Appellate Procedure.

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 children 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 children'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 children 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 Childrenren & 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/jel

- c. DH and LH
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