

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

IN RE: : **NO. 6635**
:
FQM, :
:
minor child :

OPINION AND ORDER

AND NOW, this 6th day of **January, 2022**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by SM and her fiancé, BG, on March 25, 2019. Said petition is with regard to the rights to SM's child, FQM, born March 30, 2016. SM and BG seek to terminate the parental rights of the child's biological father, SS, as a prerequisite to having the child adopted by BG. A pre-trial conference on the Petition was held on May 10, 2019, at which time SS did not appear but was represented by Andrea Pulizzi, Esquire. By Order dated May 10, 2019, this Court scheduled the hearing on the Petition for Involuntary Termination of Parental Rights for July 17, 2019, and appointed Melody Protasio, Esquire, as counsel for the child. On July 11, 2019, Mother's then-counsel, Ryan Gardner, Esquire, filed a continuance request, indicating SS's felony criminal matter involving the child was scheduled for Call of the List in August 2019, and he did not want to subject SM to cross-examination prior to the criminal trial; similarly, counsel for SS would advise him not to testify in the termination hearing prior to the resolution of his criminal matter. By Order dated July 11, 2019, this Court granted the continuance request with instructions that upon resolution of SS's criminal matter, counsel for the Petitioners should contact the Court and request that the matter be placed on the court schedule for a full-day trial on the Petition for Involuntary Termination of Parental Rights.

On July 9, 2020, this Court entered an Order releasing Melody Protasio, Esquire, as counsel for the child and appointing Tiffani Kase, Esquire, to act as legal counsel for the child.

By Order dated July 23, 2021, the Court indicated its understanding that SS's criminal matter had been resolved and scheduled a pre-trial conference for September 13, 2021, which was subsequently continued until October 29, 2021. At that time, SM appeared and was unrepresented. BG appeared and was represented by Sharon McLaughlin, Esquire. Tiffani Kase, Esquire, counsel for the child, also appeared. Neither SS nor his counsel, Andrea Pulizzi, Esquire, appeared. A hearing on the Petition for Involuntary Termination of Parental Rights was scheduled for January 3, 2022, and Attorney Pulizzi was ordered and directed to ensure that SS was served with notice of the hearing, with a verification of service being filed in the Office of the Register and Recorder by December 1, 2021.

The hearing took place as scheduled on January 3, 2022. SM appeared and was unrepresented. BG appeared and was represented by Sharon McLaughlin, Esquire. Tiffani Kase, Esquire, was present on behalf of the Child. Andrea Pulizzi, Esquire, appeared and indicated that she obtained an address for SS through his power of attorney and served him with notice of the hearing via certified and regular mail, neither of which was returned as undeliverable. After the hearing concluded, this Court contacted the Lycoming County Adult Probation Office to verify the address of record for SS. The address on file was consistent with the address Attorney Pulizzi provided. Prior to the commencement of the hearing, Attorney Pulizzi was granted leave to withdraw as counsel for SS pursuant to the Motion filed on December 29, 2021.

Finding of Facts

1. FQM (“Child”) was born on March 30, 2016. The Child currently resides with her mother, SM (“Mother”) and Mother’s fiancé, BG (“Fiancé”) at 1115 West Mountain Avenue, South Williamsport, Pennsylvania. Mother and Fiancé have been in a relationship and living together since 2017 and are engaged to be married.

2. The Child’s biological father is SS (“Father”). Father’s last known address is 1574 Northway Road, Williamsport, Pennsylvania.

3. Father filed a Complaint for Custody on July 15, 2016, at Lycoming County Docket #16-20,929. Although the parties were unable to come to an agreement at the custody conference or the follow-up custody conference, they reached an agreement at the time of the pre-trial conference on February 16, 2017.

4. On June 5, 2017, Father filed a Petition for Modification, seeking shared legal and physical custody of the Child. Following a custody trial on November 30, 2017, an Order was entered giving the parties shared legal and physical custody.

5. Following Father’s first weekend of custody under the November 30, 2017, Order, Mother filed a Petition for Emergency Custody on December 6, 2017, alleging that the Child was returned with bruises and was subsequently taken to the ER by Mother.

6. Following a hearing on December 8, 2017, the Court found there was evidence to support the allegation that the Child was endangered and that custody by Father was a threat to her safety and well-being. The emergency order entered on December 6, 2017, remained in full force and effect; however, Father was granted periods of supervised visitation and the ability, in the absence of further developments or positive findings, to petition to dissolve the emergency order after 30 days.

7. A Petition to Modify Emergency Custody Order was filed on December 21, 2018, by Andrea Pulizzi, Esquire, on behalf of Father. A hearing was scheduled for March 25, 2019.

8. Father was charged criminally at Lycoming County Docket #CR-176-2018 for the incident which resulted in the emergency custody order. Father was charged with simple assault pursuant to 18 Pa.C.S. §2701 (M1) and endangering the welfare of children pursuant to 18 Pa.C.S. §4304 (M1).

9. Prior to the hearing on March 25, 2019, counsel for Mother filed a Motion to Stay the custody proceedings, in light of the Petition for Involuntary Termination of Parental Rights that was filed on that date.

10. A hearing was held on April 1, 2019, and after hearing argument from both counsel and the GAL, granted Mother's Motion to Stay. Father's periods of custody were suspended pending the resolution of the instant Petition. The Court's decision was based upon the Child's young age and the fact that Father had not had contact with the Child in over a year.

11. Following a trial on December 12, 2019, Father was found guilty on both counts. Father was sentenced to state prison on January 13, 2020.

12. Father was released on parole from state prison sometime in September or October of 2020.

13. Father has been ordered to pay child support but Mother has not received a payment for several years.

14. Father has not sent any cards or gifts to the Child or provided any financial support for the Child since his last contact with her in 2017.

15. Mother and her Fiancé have two biological children together.

16. When Mother and her Fiancé were separated, a custody Order was entered granting Fiancé sole legal and primary physical custody of their children. Both Mother and her Fiancé testified that when their children were with Fiancé, the Child would also stay with Fiancé.

17. Mother and her Fiance have since reconciled and are again residing in the same residence as an intact family.

18. When Mother was hospitalized in approximately January 2021, she reached out to Father via telephone and offered to withdraw the Petition for Involuntary Termination if he “stepped up” as a father. Father indicated he would call Mother back but did not do so. Father never reached out to Mother again after her telephone call to him.

19. Father is aware of Mother’s phone number and address.

20. The Child refers to Mother’s Fiancé as “Daddy.”

21. The Child knows of the existence of Father, but would not recognize him.

22. Mother’s Fiancé has a father-daughter relationship with the Child. Fiancé loves and supports the Child and considers her his daughter.

23. Mother’s Fiancé desires to proceed with the adoption of the Child.

Discussion

Mother and her Fiancé 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 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.

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). In the instant case, Father has demonstrated both. 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 of the filing of the Petition for Involuntary Terminate of Parental Rights, Father has evidenced both a settled purpose of relinquishing parental claim to the Child and has failed to perform his parental duties for a period well in excess of six (6) months. Father's last in-person contact with the Child was in December of 2017, when, after his first weekend of physical custody following the entry of the custody order granting him shared physical custody, Father dropped the Child off at daycare with bruises significant enough for Mother to take her to the ER and it was later determined that Father had abused the Child. This resulted in an emergency custody order, criminal charges, and a period of incarceration, all of which prevented Father from performing parental duties.

A parent has an affirmative duty to be part of a child's life; Father has clearly not met this affirmative duty. As a consequence of his own actions, Father has not seen the Child since approximately December of 2017. In the past four years, Father has not attended any medical appointments, made the Child a single meal, or comforted her when she was sick or scared. Father has provided no cards or gifts to the Child for her birthday or Christmas. Father has not physically, emotionally, or financially supported the Child in four years. The Court finds Mother placed no obstacles in Father's path that would prevent him from exercising his parental rights, privileges, and obligations with regard to Child. In fact, Mother testified that she reached out to Father as recently as

January 2021 and offered to withdraw the instant Petition if he simply stepped up as a Father. Father did not take advantage of this offer. Father has, by both his actions and his inactions, neglected his duty to maintain a place of importance in the Child's life.

This Court finds that Mother and her Fiancé have established by clear and convincing evidence that Father has refused or failed to perform parental duties for a period well in excess of six months. Further, the Court finds that Mother and Father have established by clear and convincing evidence that Father evidenced a settled purpose of relinquishing parental claim to the Child. This settled purpose of relinquishment is especially apparent given the fact that, despite being properly served, Father failed to appear for hearing on the Petition for Involuntary Termination.

As only one subsection of 23 Pa.C.S. §2511(a) must be established by clear and convincing evidence in order to proceed to an analysis under 23 Pa.C.S. §2511(b), and the Court has found that the statutory grounds for termination have been met pursuant to 23 Pa.C.S. §2511(a)(1), the Court will not address the averments that termination is also warranted under 23 Pa.C.S. §2511(a)(2). As the statutory grounds for termination have been met, the Court must next 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).

Given that the Child was under two years of age since her last in-person contact with Father and the length of time that has passed since then, it is clear that the Child has no bond with Father. Mother testified that the Child is aware of the existence of Father, but does not remember him and would not recognize him if she were to see him. Termination of Father’s rights would not destroy an existing necessary and beneficial relationship as Father’s actions caused any bond there may have been at one time to lapse when he abused the Child and, consequently, was prohibited from seeing her. The Child is very bonded to Mother’s Fiancé, who has lived with the Child and acted as a parental figure since 2017. It is evident to the Court that Mother’s Fiancé loves and cares for Child and treats her as his own. Mother’s Fiancé has stepped in and provided the love and support Child needs and has assumed the parental responsibilities that

Father has utterly failed to perform and has evidenced a settled purpose of relinquishing.

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

Conclusions of Law

1. The Court finds that SM and BG have established by clear and convincing evidence that SS's parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that SM and BG have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of FQM will best be served by termination of SS'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. 6635**
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FQM, :
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DECREE

AND NOW, this 6th day of **January, 2022**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of SS, held on January 3, 2022, it is hereby ORDERED and DECREED:

- (1) That the parental rights of SS 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 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,

Joy Reynolds McCoy, Judge