

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

IN RE: : **NO. 2021-6778**
: :
T.R.G., : :
minor child : :

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

IN RE: : **NO. 2021-6778**
: :
A.M.S., : :
minor child : :

OPINION AND ORDER

AND NOW, this **22nd** day of **March, 2022**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by Mother, K.J.M., and her husband, E.M., on December 17, 2021. Said petition is with regard to the rights to K.J.M.'s children, T.R.G., born [redacted], and A.M.S., born [redacted]. Mother and her husband seek to terminate the parental rights of the children's biological father, S.G., as a prerequisite to having the children adopted by Mother's husband.

A prehearing conference was scheduled for January 21, 2022. S.G. was served with notice of the Petition for Involuntary Termination of Parental Rights and pre-hearing conference via certified mail on January 14, 2022. At the time of the pre-trial conference, S.G. did not appear. By Order docketed January 24, 2022, a hearing on the Petition for Involuntary Termination of Parental Rights was scheduled for March 21, 2022, and S.G. was advised that if he wished to have counsel appointed on his behalf, he must advise the Court in writing by February 21, 2022. The Order was sent to the

last known address of S.G. and was not returned as undeliverable. This Court is satisfied that S.G. received proper notice of the time, date, and location of the hearing.

S.G. did not contact the Court at any time between the pre-trial conference and the hearing on the Petition for Involuntary Termination of Parental Rights. The hearing took place as scheduled on March 21, 2022. K.J.M. and E.M. attended and were represented by Timothy Reitz, Esquire. S.G., though properly served, failed to appear.

Finding of Facts

1. T.R.G. was born on [redacted], and A.M.S. was born on [redacted] (collectively, "Children"). The Children currently reside with their mother, K.J.M. ("Mother") and Mother's husband, E.M. ("Mother's Husband") at [redacted]. The Children have resided with Mother since birth.

2. The Children's biological father is S.G. ("Father"). Father's last known address is [redacted].

3. At the time of Children's births, Mother and Father were not married, nor have they ever been married.

4. Mother moved to Florida when T.R.G. was 2 years old and she was pregnant with A.M.S.. Father consented to the move and therefore there was not a court order granting Mother permission to relocate.

5. Father was not present for A.M.S.'s birth.

6. When Mother moved to Pennsylvania with the Children, she sought child support in New York, the state where Father resides. Father took a paternity test and was confirmed to be A.M.S.'s father.

7. Father has never filed a Complaint for Custody to establish or enforce his custodial rights to the Children.

8. Father's last contact with either Mother or the Children was approximately nine (9) or ten (10) years ago.

9. Father has never performed any parental duties with regard to A.M.S., and has not performed any parental duties with regard to T.R.G. for approximately twelve (12) years.

10. The last time Father provided any physical, emotional, or financial support for the benefit of the Children was nearly twelve (12) years ago.

11. Mother's Husband has a father-son relationship with the Children. He loves and supports the Children and has been a father-figure to him for approximately eight (8) or nine (9) years.

12. Mother's Husband desires to proceed with the adoption of the Children.

Discussion

Mother and Mother's Husband 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 Children 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 Children was approximately ten (10) years ago. Father has never contacted Mother to request to see the Children.

A parent has an affirmative duty to be part of a child's life; Father has clearly not met this affirmative duty. Father has not even shown a passive interest in the Children for the last ten (10) years. Father never utilized the court system to file a Complaint for Custody to establish or enforce his custodial rights to the Child. It has been twelve (12) years since Father performed any type of parental duties, including providing physical, emotional, or financial support to them or for their benefit. 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 Children. Father has simply neglected his duty to maintain a place of importance in the Children's lives.

This Court finds that Mother and Mother's Husband have established by clear and convincing evidence that Father 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. 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.

The Court notes that Mother and Mother's Husband also allege grounds for termination of Father's parental rights have also been established pursuant to 23 Pa.C.S. §2511(a)(2), in that the repeated and continued incapacity, abuse, neglect or

refusal of Father has caused the children to be without essential parental care, control or subsistence necessary for his physical or mental well-being. 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 overwhelming evidence 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 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 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).

In the present case, given the length of time the Father has gone without any involvement in the Children's lives, it is clear that there is no bond between Father and the Children. Termination of Father's rights would not destroy an existing necessary and beneficial relationship as Father has never made any effort to establish or maintain a relationship with either of the Children. The Children are bonded to Mother's Husband, who has been involved in the their lives for at least eight (8) years. It is evident to the Court that Mother's Husband loves and cares for the Children and desires to proceed with the adoption. Mother's Husband has stepped in and provided the love and support the Children need 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 Mother's Husband understand the potential consequences of allowing Mother's Husband to adopt Children, and that termination Father's parental rights and allowing the adoption by Mother's Husband to proceed is in the best interest of the Children.

Conclusions of Law

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

2. The Court finds that K.J.M. and E.M. have established by clear and convincing evidence that the developmental, physical and emotional needs and welfare of T.R.G. and A.M.S. will best be served by termination of S.G.'s parental rights.

Accordingly, the Court will enter the attached Decree.

By the Court,

Ryan M. Tira, Judge

RMT/jel

c. Timothy Reitz, Esquire
S.G.
Gary Weber, Esquire
Jennifer Linn, Esquire – Judge Tira's chambers

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DECREE

AND NOW, this **22nd** day of **March, 2022**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of S.G., held on March 21, 2022, it is hereby ORDERED and DECREED:

- (1) That the parental rights of S.G. 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 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 Public Welfare
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/jel

- c. Timothy Reitz, Esquire
S.G.
Gary Weber, Esquire
Jennifer Linn, Esquire – Judge Tira's chambers