

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

IN RE: : **NO. 2021-6775**
:
AB, :
:
Minor child :
:

OPINION AND ORDER

AND NOW, this 20th day of **July, 2022**, before the Court is Lycoming County Children & Youth Services' ("Agency") Petition for Involuntary Termination of Parental Rights of JB ("Father") filed on January 26, 2022, with regard to AB ("Child"). A hearing on the Petition for Involuntary Termination of Parental Rights was held on July 18, 2022. Father was represented by Matthew Diemer, Esquire. Father did not attend, despite being properly served with the Petition and notice of the time, date, and location of the hearing. John Pietrovito, Esquire, Solicitor for the Agency, and Angela Lovecchio, Esquire, counsel for the Child, were also present at the hearings. KL ("Mother") signed a Consent to Adopt on April 5, 2022, and was not present at the hearings. Her counsel, Jessica Feese, Esquire, attended the proceedings.

Findings of Facts

AB was born on [redacted]. She is the child of JB, date of birth [redacted], and KL, date of birth [redacted]. Mother and Father were not married at the time of the Child's birth.

On October 30, 2020, Mother voluntarily placed the Child in the custody of the Agency. A dependency hearing was held on November 23, 2020. Helen Stolinis, Esquire, was appointed to represent Father. Father did not attend the dependency

hearing. After the hearing the Court found by clear and convincing evidence that the Child was without proper care or control necessary for her physical, mental, emotional health, or morals, and physical and legal custody of the Child remained with the Agency. The Child remained placed in her current foster home.

Permanency review hearings were held on February 24, 2021; May 26, 2021 and completed on June 28, 2021; October 20, 2021; and February 16, 2022. Father did not attend any of the hearings. Father was incarcerated in Northampton County from February 16, 2021, to March 26, 2021. Following his release, he absconded from Northampton County Adult Probation. Former caseworker Ashley Myers had telephone contact with Father on April 14, 2021, at which time he was in a behavioral health facility in Philadelphia; however, she was unable to verify this. Father's Probation Officer talked to him on April 27, 2021, and advised him of the hearing on May 26, 2021. Father had no contact with the Agency during any of the review periods.

Following the filing of the Petition for Termination of Parental Rights, caseworker Heidi Porter spoke with Father on April 13, 2022, while he was again incarcerated at Northampton County Prison. On April 14, 2022, she provided Father with notice of the hearing on the Petition for Involuntary Termination of Parental Rights and the next permanency review hearing. On April 28, 2022, Father called caseworker Porter following his release from incarceration. At that time, he confirmed that he had received the documents she had mailed him, and that he intended to attend the upcoming hearings. Similarly, Matthew Diemer, Esquire, had two phone calls with Father in April 2022 while he was incarcerated, but has had no contact with Father since that time. On May 15, 2022, Attorney Diemer mailed a letter to Father advising him of the termination hearing and requested that he contact him.

A permanency review hearing was held on June 1, 2022. It was reported that Father had recently been released from incarceration, and that he intended to request visitation. However, he failed to follow through and had no contact with the Agency at all. Again, despite having been properly served, Father failed to attend the hearing.

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 Mother'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).

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). In the present case, this Court finds that Father has both demonstrated a settled purpose to relinquish parental claim to the Child *and* failed to perform parental duties for well in excess of six months prior to the filing of the termination petition. Father has never financially supported the Child or provided the Child with the basic necessities such as food, clothing, diapers, etc. Father has never attended a medical or dental appointment for the Child. Father has never sent the Child cards or letters, nor has he provided any gifts to her for birthdays or holidays. Father has never made the Child a meal, never tucked her into bed at night, and never comforted her when she was sick or scared. In fact, Father has never met or spoken to the Child.

Since the Child's placement on October 30, 2020, her resource parents have performed all of the parental duties for the Child. Father failed to meaningfully participate in the Child's life prior to and during the Agency's involvement. Father had no contact with the Agency and made no efforts to complete any of the service plan goals. Despite being properly served with notice of the hearing to terminate his parental rights, Father chose not to contact his court-appointed counsel and failed to appear to contest the proceeding. 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 failed to perform his parental duties for at least six months prior to the filing of the termination petition *and* demonstrated a settled purpose to relinquish claim to the Child.

The Agency's Petition argued that termination of Father's parental rights was also warranted under 23 Pa.C.S. §2511(a)(2),(5), and (8); however, it only needs to prove one subsection by clear and convincing evidence. As the Court has found that such overwhelming evidence was presented regarding Father's failure to perform

parental duties and his settled purpose to relinquish parental claim to the Child pursuant to 23 Pa.C.S. §2511(a)(1), the Court does not feel the need to address the other three subsections contained in the Petition for Involuntary Termination of Parental Rights. As 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.

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.

Id. (citations omitted).

In the present case, it is clear to the Court that no bond exists between the Child and Father, as she has never met Father. The foster parents have provided everything

the Child needs and this has naturally established a bond and attachment between the Child and the individuals whom she identifies as her primary caretakers. The Child is clearly bonded with the resource parents, who have provided for her physical and emotional needs for almost two years, and who are willing to offer her permanency. The Court is satisfied that termination of Father's parental rights would not cause irreparable harm to the Child. This Court further finds that permanency in the form of adoption by those who have met her needs since October 30, 2020, 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 JB, by conduct continuing for a period of at least six months immediately preceding the filing of the petition has failed to perform parental duties and has demonstrated a settled purpose of relinquishing parental claim to the Child pursuant to 23 Pa.C.S. §2511(a)(1).

2. The Court finds that the Agency has established by clear and convincing evidence that there is no bond between JB and the Child, and the Child will not suffer irreparable harm if the parental rights are terminated. The Court further finds that the developmental, physical and emotional needs and welfare of the Child will be best served by the termination of Father's 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/jel

- c. John Petrovito, Esquire
Matthew Diemer, Esquire
Angela Lovecchio, Esquire
Children & Youth
CASA
Gary Weber, Esquire
Jennifer Linn, Esquire

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IN RE: : **NO. 2021-6775**
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DECREE

AND NOW, this **20th** day of **July, 2021**, after a hearing on the Petition for Involuntary Termination of the Parental Rights of JB, held on July 18, 2022, it is hereby ORDERED and DECREED:

- (1) That the parental rights of JB 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

RMT/jel

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