

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

IN RE: : **NO. 2022-6823**
:
JAR, :
:
minor child :

OPINION AND ORDER

AND NOW, this 28th day of **April, 2023**, before the Court is a Petition for Involuntary Termination of Parental Rights filed by LR and her husband, CB, on August 3, 2022. Said petition is with regard to the rights to LR's child, JAR, born [redacted]. LR and CB seek to terminate the parental rights of the child's biological father, AB, as a prerequisite to having the child adopted by CB. A pre-trial conference on the Petition was held on October 28, 2022, at which time AB participated by telephone and was represented by Andrea Pulizzi, Esquire. By Order dated November 1, 2022, this Court scheduled the hearing on the Petition for Involuntary Termination of Parental Rights for March 1, 2023, and appointed Sarah Stigerwalt-Egan, Esquire, as counsel for the child.

The hearing on the Petition for Involuntary Termination of Parental Rights was held as scheduled on March 1, 2023. LR and CB were present and represented by Trisha Hoover Jasper, Esquire. AB was present and represented by Andrea Pulizzi, Esquire. Also present was Sarah Stigerwalt, Esquire, counsel for Jade Adalynn Rager.

Finding of Facts

1. JAR ("Child") was born on November 5, 2019. The Child currently resides with her mother, LR ("Mother") and Stepfather, CB ("Stepfather") at [redacted].
2. Mother has known Stepfather since she was 15. They dated on and off for eight years before marrying in July of 2022.
3. The Child's biological father is AB ("Father"). Father resides at [redacted].

4. Mother and Father began dating in November of 2018 and Father proposed at the end of January 2019, but Mother felt overwhelmed and they broke up.
5. Upon learning of Mother's pregnancy, Father texted her indicating he would not be involved with the Child if Mother chose to have the baby.
6. Father blocked Mother for the second half of the pregnancy and she was unable to tell him she went into labor.
7. Stepfather was present at the hospital when Mother gave birth.
8. Mother and Father were not married at the time of the Child's birth.
9. Father's mother first met the Child in January of 2020. Father's mother provided childcare for the Child approximately two days a week from the end of January 2020 through March of 2020. Father was sometimes present when his mother babysat.
10. Father first met the Child at the end of January 2020.
11. Father would see the Child as he and Mother agreed between January 2020 and his deployment in August of 2021.
12. Father never filed a complaint for custody. He testified that he knew he would be deployed and he believed he and Mother had a good relationship with regard to him seeing the Child when he was able.
13. Mother never filed an action for child support despite indicating she planned to do so in a text exchange with Father.
14. Between March 31, 2020 and November 2, 2021, Father sent Mother 11 payments totaling \$1,950 for the benefit of the Child.
15. Father sent an additional payment of \$250.00 on November 16, 2021, which was returned by Mother.

16. Father was deployed in Guantanamo Bay, Cuba, from August of 2021 until June of 2022. Upon his return to the United States, he remained on active duty until the end of August of 2022.

17. The last time Father had in-person contact with the Child was at his going away party in August of 2021.

18. Father requested Mother send photos of the Child on Halloween but Mother did not send any to him.

19. Mother and the Child attended a baby shower for one of Father's family members in November of 2021. Father's mother and the Child faceted with Father at that time.

20. Father arranged for gifts to be delivered to the Child while he was deployed. However, Mother provided an address other than her own and Father's mother did not feel comfortable leaving the gifts at that address so the Child did not receive them.

21. Mother blocked Father from her social media accounts in November of 2021 and has had no contact with him since that time.

22. Father's mother continued to have contact with Mother and the Child until Mother indicated that she would no longer be comfortable bringing the Child to Father's mother's house but that Father's mother and her family could visit with the Child at Mother's home.

23. Father did not inform Mother when he returned from deployment because she had blocked his communications.

24. Upon his return from deployment, Father struggled with mental health issues and was ordered to go to the VA to receive counseling.

25. Although they married in July of 2022, Mother and the Child did not begin residing with Stepfather until December of 2022. Mother did not inform Father of her change of address.

26. The Child refers to Stepfather as “Daddy.”

27. Stepfather has a father-daughter relationship with the Child. Stepfather loves and supports the Child and considers her his daughter.

28. Stepfather desires to proceed with the adoption of the Child.

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). Mother and Stepfather 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). 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).

Mother and Father were no longer in a relationship at the time Mother learned of her pregnancy. Father was initially unsupportive of the pregnancy, and indicated he would not be involved in raising the Child if Mother chose to have the baby. (Ex. P3). Father blocked Mother from contacting him during the second half of the pregnancy and, as a result, Mother did not contact him when she went into labor and the Child was born. Father first met the Child a few months after she was born, and began to develop a relationship with her. Father's mother was actively involved in the Child's life and provided childcare while Mother worked and attended school for a period of time prior to the pandemic. From January 2020 until August of 2021, Father would see the Child as

he and Mother agreed. From March of 2020 until November of 2021, Father occasionally sent Mother payments for the child's benefit. The last payment Father sent, on November 16, 2021, was refused and returned by Mother.

A parent has an affirmative duty to be part of a child's life. 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).

There is no dispute that the last time Father saw the Child in person was in August of 2021, when Mother brought the Child to a going-away party for Father prior to his deployment. Father was deployed in Guantanamo Bay, Cuba, from August of 2021 until June of 2022. When he returned to the United States he remained on active duty and dealt with some mental health issues which were a result of his deployment. Despite threats by Father to file a Complaint for Custody and threats by Mother to file an action for child support, neither party has ever utilized the court system to establish or enforce parental obligations or privileges. The Petition for Involuntary Termination of

Parental Rights was filed on August 3, 2022, prior to the expiration of Father's active duty commitment.

Father was out of the country for a significant portion of the six months immediately preceding the filing of the Petition for Involuntary Termination of Parental Rights, and remained on active military duty until after the Petition was filed. Although his ability to perform parental duties was made more difficult by his deployment and subsequent mental health concerns, these circumstances do not relieve Father of all parental responsibility. "An absent parent must make special efforts to overcome the gaps created by geographic separation." **In re Adoption of David C**, 387 A.2d 804, 811 (Pa. 1978). "Since communication and association are essential to the performance of parental duty, the absent parent and his child are at a disadvantage; and if such a parent is to perform his parental duties, even to a more limited extent than when he lived with the family, he must make special effort to bridge the gulf of geographical separation and to take affirmative steps to maintain communication and association with his child..." **Id.** at 808.

Father testified that he attempted to maintain contact with the Child while he was deployed but he experienced difficulties, including an inability to send text messages, long work hours and a time change, and the monitoring of his facetime calls. While the Court notes some inconsistency in Father's testimony, in that he admitted he was able to post to social media and facetime with his mother, Father's attempts to maintain a place of importance in the Child's life were thwarted when Mother blocked him from social media in November of 2021, just a few days after he was able to facetime with the Child while she was at a relative's baby shower. Father's mother attempted to maintain a relationship with the Child while he was deployed. However, around the

same time that Mother blocked Father from her social media, Mother informed Father's mother that she would no longer bring the Child to her home, and instead indicated that Father's family could visit with the Child at Mother's home. (Ex. P4). This led to a lengthy and somewhat immature text exchange between Mother and Father's mother where neither party would budge for the benefit of the Child. Father requested that his mother purchase gifts from him for the Child. However, Mother was evasive and would not provide her own mailing address to Father's mother and the gifts were never delivered.

Even where the evidence clearly establishes a parent has failed to perform affirmative parental duties for a period in excess of six months as required by 23 Pa.C.S. §2511(a)(1), the court "must examine the individual circumstances and any explanation offered by the parent to determine if that evidence, in light of the totality of the circumstances, clearly warrants permitting the involuntary termination [of parental rights]." **In re Adoption of L.A.K.**, 265 A.3d 580, 593 (Pa. 2021). The law must be applied with the purpose of serving needs and welfare of each individual child in his or her particular circumstances. **Id.**

It is within this framework that a court determines whether a parent has faced barriers that prevented the parent from maintaining the parent-child relationship. What constitutes a "barrier" in the context of a Section 2511(a)(1) analysis is a finding within the discretion of the trial court, and what may constitute a barrier necessarily will vary with the circumstances of each case. In some instances, obstructive behavior by the child's custodian presents a barrier to the parent's ability to perform parental duties, which mitigates the parent's failure to maintain the parent-child relationship. See, e.g., [Atencio](#), 650 A.2d at 1067; [D.J.Y.](#), 408 A.2d at 1389-90. In other instances, trial courts have found substance abuse, mental health issues, homelessness, joblessness, criminal charges, or a confluence of some or all of these issues created barriers to the maintenance of the parent-child relationship.

Id. The Court finds the record demonstrates that Father could have and should have done more to actively parent his Child and maintain a place of importance in her life. However, Father's deployment and subsequent mental health issues, coupled with Mother creating unnecessary barriers to Father and his family's attempts to maintain a relationship with the Child are mitigating factors. Under the totality of the circumstances his conduct does not rise to the requisite clear, direct, weighty and convincing evidence which shows a settled purpose of relinquishment of parental claim for at least six months prior to the filing of the petition. Accordingly, the Petitioners have not met their burden under 23 Pa.C.S. § 2511(a)(1) of proving by clear and convincing evidence that Father has failed to perform parental duties or has shown a settled purpose of relinquishing parental claim to the Child in the six months preceding the filing of the Petition for Involuntary Termination of Parental Rights.

Petitioners also allege that termination of Father's parental rights is warranted under 23 Pa.C.S. §2511(a)(2). 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).

There were no specific details in the Petition for Involuntary Termination of Parental Rights, nor were any elicited through testimony at the hearing, regarding exactly what incapacity Petitioners are alleging that Father cannot or will not remedy. While this Court finds some of Father's explanations for his failure to maintain contact

with the Child during his deployment not credible, it is clear that Father was not able to see the Child for a lengthy period of time while he was out of the country. The Court finds that Father promptly made a concerted effort upon his return to address his mental health concerns and to obtain housing and employment. While the Court is cognizant of the fact that “parental rights are not preserved by waiting for a more suitable or convenient time to perform one’s parental responsibilities,” the Court will not consider Father’s military service or his mental health issues resulting therefrom an incapacity, particularly in light of the steps Father took to address these concerns immediately upon his return to the United States. The Petitioners have not met their burden by clear and convincing evidence that Father has exhibited incapacities that he is unable or unwilling to rectify.

The Court finds that LR and CB have not established by clear and convincing evidence that Antonio Blackman’s parental rights should be involuntarily terminated pursuant to 23 Pa.C.S. §2511(a)(1) or (2). Having made this determination that grounds for termination have not been proven pursuant to 23 Pa.C.S. §2511(a), the Court will not proceed to an analysis of whether termination would best serve the developmental, physical and emotional needs and welfare of the Child pursuant to 23 Pa.C.S. §2511(b). Accordingly, the Petition for Involuntary Termination of Parental Rights filed on August 3, 2022, is **DENIED**.

By the Court,

Ryan M. Tira, Judge

RMT/jel

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